

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5 IN RE: NATIONAL : MDL NO. 2804
6 PRESCRIPTION OPIATE :
7 LITIGATION :

7 : CASE NO.
8 THIS DOCUMENT : 1:17-MD-2804
9 RELATES TO ALL CASES:

 : Hon. Dan A.
 : Polster

10 - - -

 Tuesday November 20, 2018

11 - - -

12 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
13 CONFIDENTIALITY REVIEW

14 - - -

15 Videotaped deposition of
16 MARK VERNAZZA, taken pursuant to notice,
17 was held at Zuckerman Spaeder, LLP,
18 1800 M Street NW, Suite 1000, Washington,
19 DC 2003, beginning at 9:13 a.m., on the
20 above date, before Amanda Dee
21 Maslynsky-Miller, a Certified Realtime
22 Reporter.

 - - -

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13 ALSO PRESENT:
14 Daniel Holmstock, Videographer
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16

1 - - -
 2 I N D E X
 3 - - -
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Testimony of: MARK VERNAZZA

5
 6 By Mr. Kennedy 12
 7

8 - - -
 9 E X H I B I T S
 10 - - -
 11

NO.	DESCRIPTION	PAGE
CVS-Vernazza		
Exhibit-1	United States Code - Section 823	76
CVS-Vernazza		
Exhibit-3	CVS-MDLT1-000010552-555	100
CVS-Vernazza		
Exhibit-4	CVS-MDLT1-000013534-536	135
CVS-Vernazza		
Exhibit-6	CVS-MDLT1-000025204-259	205
CVS-Vernazza		
Exhibit-7	CVS-MDLT1-000034234-300	229
CVS-Vernazza		
Exhibit-8	CVS-MDLT1-000024877-941	274
CVS-Vernazza		
Exhibit-9	CVS-MDLT1-000088956-9025	304
CVS-Vernazza		
Exhibit-14	CVS-MDLT1-000034374	
With attachment		222

1	-	-	-
2	E	X	H I B I T S
3	-	-	-
4			
5	NO.	DESCRIPTION	PAGE
6	CVS-Vernazza		
7	Exhibit-16	CVS-MDLT1-000034175-177	397
8	CVS-Vernazza		
9	Exhibit-17	CVS-MDLT1-000024523-524	429
10	CVS-Vernazza		
11	Exhibit-18	CVS-MDLT1-000029864	
12		With attachment	445
13	CVS-Vernazza		
14	Exhibit-18A	CVS-MDLT1-000029864-866	432
15	CVS-Vernazza		
16	Exhibit-23	CVS-MDLT1-000034168-171	420
17	CVS-Vernazza		
18	Exhibit-24	CVS-MDLT1-000075542	414
19	CVS-Vernazza		
20	Exhibit-25	CVS-MDLT1-000029877-880	446
21	CVS-Vernazza		
22	Exhibit-30	CVS-MDLT1-000057751-754	308
23	CVS-Vernazza		
24	Exhibit-31	CVS-MDLT1-000075299-312	317
	CVS-Vernazza	CVS-MDLT1-000076284-285	
	Exhibit-32		295
	CVS-Vernazza		
	Exhibit-34	CVS-MDLT1-000061097	266
	CVS-Vernazza		
	Exhibit-40	CVS-MDLT1-000089188	300

1	E X H I B I T S		
2	- - -		
3			
4	NO.	DESCRIPTION	PAGE
5	CVS-Vernazza		
6	Exhibit-43	CVS-MDLT1-000081281	267
7	CVS-Vernazza		
8	Exhibit-44	CVS-MDLT1-000089315-379	280
9	CVS-Vernazza		
10	Exhibit-45	CVS-MDLT1-000090853-854	238
11	CVS-Vernazza		
12	Exhibit-46	CVS-MDLT1-000091508-518	119
13	CVS-Vernazza		
14	Exhibit-48	CVS Controlled Drug Manual: Suspicious Order Monitoring Procedure	285
15	CVS-Vernazza		
16	Exhibit-49	CVS-MDLT1-000087889-890	254
17	CVS-Vernazza		
18	Exhibit-65	CVS-MDLT1-000019722-786	150
19	CVS-Vernazza		
20	Exhibit-93	CVS-MDLT1-000068377-381	182
21	CVS-Vernazza		
22	Exhibit-103	Amended First Notice of Deposition Pursuant to Rule 30(b)(6) and Document Request Pursuant to Rule 30(b)(2) and Rule 34 to Defendant CVS Health Corporation	25
23			
24			

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E X H I B I T S

- - -

NO.	DESCRIPTION	PAGE
CVS-Vernazza Exhibit-104	Amended Second Notice of Deposition Pursuant to Rule 30(b)(6) and Document Request Pursuant to Rule 30(b)(2) and Rule 34 to Defendant CVS Health Corporation	26
CVS-Vernazza Exhibit-105	9/21/18 Letter from Daniel Goetz to Eric Delinsky	27
CVS-Vernazza Exhibit-108	10/22/18 Letter from Daniel Goetz to Eric Delinsky	27
CVS-Vernazza Exhibit-111	CVS-MDLT1-000103859-867	426
CVS-Vernazza Exhibit-119	CVS-MDLT1-000012286	460
CVS-Vernazza Exhibit-125	CVS-MDLT1-000034172; Native	453

1

- - -

2

DEPOSITION SUPPORT INDEX

3

- - -

4

5

Direction to Witness Not to Answer

6

Page Line	Page Line	Page Line
-----------	-----------	-----------

7

None

8

9

10

Request for Production of Documents

11

Page Line	Page Line	Page Line
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12

None

13

14

15

Stipulations

16

Page Line	Page Line	Page Line
-----------	-----------	-----------

17

12	1	
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18

19

20

Question Marked

21

Page Line	Page Line	Page Line
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22

None

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(It is hereby stipulated and

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agreed by and among counsel that

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sealing, filing and certification

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are waived; and that all

6

objections, except as to the form

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of the question, will be reserved

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until the time of trial.)

9

- - -

10

VIDEO TECHNICIAN: We are

11

now on the record. My name is

12

Daniel Holmstock. I'm the

13

videographer for Golkow Litigation

14

Services. Today's date is

15

November 20th, 2018. The time on

16

the video screen is 9:13 a.m.

17

This video deposition is

18

being held at Zuckerman Spaeder

19

LLP, 1800 M Street, Northwest,

20

Suite 1000, in Washington, D.C.,

21

in the matter of In Re National

22

Prescription Opiate Litigation

23

pending before the United States

24

District Court for the Northern

1 District of Ohio, Eastern
2 Division. The deponent is CVS,
3 and representing CVS is Mr. Mark
4 Vernazza.

5 The court reporter is Amanda
6 Miller. Counsel will be noted on
7 the stenographic record. And
8 will, now, the court reporter
9 administer the oath?

10 - - -

11 MARK VERNAZZA, after having
12 been duly sworn, was examined and
13 testified as follows:

14 - - -

15 MR. KENNEDY: This is Eric
16 Kennedy, I represent the
17 plaintiffs in this litigation.

18 If we can go around the room
19 and everybody just introduce
20 themselves and let us know who you
21 represent, please.

22 MR. GOETZ: Dan Goetz,
23 plaintiffs.

24 MR. BAKER: William Baker,

1 plaintiffs.

2 MR. DEROCHE: James DeRoche,
3 plaintiffs.

4 MR. ELSNER: Michael Elsner,
5 plaintiffs. And with me today are
6 Michael Hall and Amanda
7 Unterreiner.

8 MS. CALZOLA: Gianna Calzola
9 from Pelini Campbell & Williams on
10 behalf of Prescription Supply,
11 Inc.

12 MS. DEFRANCESCO: Lindsay
13 DeFrancesco, Reed Smith, on behalf
14 of Amerisource Bergen.

15 MS. KVESELIS: Emily
16 Kveselis, Covington & Burling, for
17 McKesson.

18 MR. PYSER: Steven Pyser,
19 Williams and Connolly, Cardinal
20 Health.

21 MS. MILLER: Sasha Miller,
22 Zuckerman Spaeder, on behalf of
23 CVS, Indiana, LLC and CVS RX
24 Services, Inc., and on behalf of

1 the corporate designee, Mr. Mark
2 Vernazza.

3 MR. DELINSKY: Eric
4 Delinsky, of Zuckerman Spaeder on
5 behalf of CVS Indiana, LLC and CVS
6 RX Services Inc., and on behalf of
7 their corporate designee, Mark
8 Vernazza and Mr. Vernazza himself.

9 And just at the outset, I
10 would like to make clear that the
11 deposition is of CVS Indiana, LLC
12 and CVS RX, Inc., the two CVS
13 defendants named in the case.

14 MR. KENNEDY: Eric Kennedy
15 on behalf of plaintiffs.

16 The gentleman who manages
17 our exhibits is not here,
18 unexpectedly. We hope everything
19 is okay.

20 But because of that, we're
21 going to use paper exhibits. And
22 we're not going to be putting them
23 up on the screen. And we have an
24 agreement that those paper

1 exhibits that we utilize,
2 thereafter, if this deposition is
3 played, the video will be played,
4 we will be allowed to use those
5 exhibits, split the screen and
6 highlight what is actually read
7 into the record and referenced by
8 the witness.

9 Agreeable?

10 MR. DELINSKY: Agreeable.

11 MR. KENNEDY: Great.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. KENNEDY:

16 Q. Sir, my name is Eric
17 Kennedy. We briefly met.

18 Could you please state your
19 full name for the record?

20 A. My full name is Mark Robert
21 Vernazza.

22 Q. And what is your
23 professional address, sir?

24 A. 1 CVS Drive in Woonsocket,

1 Rhode Island.

2 Q. And who is your current
3 employer?

4 A. CVS Pharmacy, Inc.

5 Q. And what is your present
6 position with CVS Pharmacy, Inc.

7 A. Senior legal counsel.

8 Q. Tell me about your current
9 duties and responsibilities.

10 A. I assist the company
11 primarily with respect to litigation and
12 government investigations.

13 Q. And when you said "senior
14 legal counsel," that means you are a
15 lawyer?

16 A. I am a lawyer.

17 Q. You do not work, am I
18 correct, for either of the CVS defendants
19 in this case?

20 A. I may, from time to time,
21 perform services on behalf of those
22 entities. I'm not employed by those
23 entities.

24 Q. And when you provide

1 services for those entities, CVS Indiana,
2 LLC and CVS RX Services, who pays you?

3 A. CVS Pharmacy, Inc.

4 Q. Tell me about your career,
5 if you can, briefly, with CVS.

6 A. I joined the company in
7 approximately January of 2014 as senior
8 legal counsel. I have remained in that
9 position until the present day.

10 Q. Have your responsibilities
11 as a lawyer at CVS, have they involved,
12 in any way, a suspicious order monitoring
13 of controlled substances?

14 MR. DELINSKY: I would
15 instruct the witness not to
16 answer, to the extent it calls for
17 attorney-client information.

18 BY MR. KENNEDY:

19 Q. And at all times, please, do
20 not answer any questions that you believe
21 or feel invade that privilege, all right?

22 A. Absolutely.

23 I have been part of a team
24 of lawyers in-house that advises the

1 company with respect to litigation,
2 including this litigation, as well as
3 controlled substances matters more
4 generally.

5 Q. And that did not begin until
6 2014, would that be true?

7 A. That would be true.

8 Q. And your responsibilities
9 with respect to the monitoring of
10 suspicious orders, would I be correct
11 that those responsibilities did not begin
12 until after CVS stopped distributing
13 hydrocodone drugs to CVS pharmacies?

14 MR. DELINSKY: Object to
15 form.

16 THE WITNESS: I'm not a part
17 of the team that regularly reviews
18 suspicious orders. My
19 responsibility is providing legal
20 services with the company,
21 beginning upon my employment with
22 the company in January of 2014.

23 BY MR. KENNEDY:

24 Q. All right. So there was

1 some overlap?

2 A. CVS ceased the distribution
3 of hydrocodone combination products upon
4 those products being upscheduled to
5 Schedule II in October of 2014. That is
6 before I joined the company.

7 Q. All right.

8 A. Excuse me. I joined the
9 company before that time.

10 Q. Correct. Let's just cut to
11 the chase.

12 You've had no
13 responsibility, at any point in time, in
14 the creation, implementation or direct
15 management of any controlled substance
16 monitoring program at CVS; true?

17 MR. DELINSKY: Object to
18 form.

19 THE WITNESS: I'm not sure
20 that I can answer that question
21 without revealing privileged
22 communications.

23 BY MR. KENNEDY:

24 Q. Let me ask you, identify for

1 me what controlled substance operating
2 policies and procedures that you wrote?

3 MR. DELINSKY: Object to
4 form. And I instruct the witness
5 not to --

6 BY MR. KENNEDY:

7 Q. Prior to October of 2014,
8 tell me which ones you wrote.

9 A. Prior to October?

10 Q. Of 2014, yes.

11 MR. DELINSKY: Object to the
12 form of the question. And I
13 instruct -- I instruct the witness
14 not to answer, to the extent
15 answering requires the disclosure
16 of attorney-client privileged
17 information.

18 THE WITNESS: I don't recall
19 offering any controlled substance
20 policy with respect to suspicious
21 order monitoring, prior to October
22 of 2014.

23 BY MR. KENNEDY:

24 Q. You didn't operate -- you

1 didn't create or write any; would that be
2 true?

3 A. With respect to suspicious
4 order monitoring, that's correct.

5 Q. Your involvement with
6 suspicious order monitoring has always
7 been as a lawyer, correct?

8 A. That's correct.

9 Q. In 2006, where were you
10 working?

11 A. At a law firm in Boston.

12 Q. Any involvement with CVS in
13 2006?

14 A. Not to my recollection.

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15 A. My understanding is yes.

16 Q. Now, you've been asked to
17 provide testimony in response to 30(b)(6)
18 notices in this case.

19 Would that be correct?

20 A. Yes.

21 Q. And I'm going to mark those
22 exhibits, if we can.

23 MR. KENNEDY: Can we take a
24 break for a second?

1 - - -

2 (Whereupon, a discussion off
3 the record occurred.)

4 - - -

5 VIDEO TECHNICIAN: The time
6 is 9:22 a.m. We're going off the
7 record.

8 - - -

9 (Whereupon, a brief recess
10 was taken.)

11 - - -

12 VIDEO TECHNICIAN: The time
13 is 9:31 a.m. We are back on the
14 record.

15 BY MR. KENNEDY:

16 Q. All right. Before we went
17 off the record, I asked you whether or
18 not you were here in response to 30(b)(6)
19 notices that had been served on CVS.

20 And your answer was that you
21 are, correct?

22 A. On behalf of CVS Indiana,
23 LLC and CVS RX Services, Inc., the
24 defendants in this case.

1 Q. All right. I'm going to
2 refer to them as the CVS defendants; so
3 you'll know what I'm talking about when I
4 say CVS defendants, it will be those two
5 distributor entities that you just
6 described, all right?

7 A. That's fair.

8 Q. I'm going to give you CVS
9 Exhibit-103, I think we already have 103,
10 104, 105 and 108.

11 Is 103 the first amended
12 notice of deposition pursuant to Rule
13 30(b)(6)?

14 - - -

15 (Whereupon, CVS-Vernazza
16 Exhibit-103, Amended First Notice
17 of Deposition Pursuant to Rule
18 30(b)(6) and Document Request
19 Pursuant to Rule 30(b)(2) and Rule
20 34 to Defendant CVS Health
21 Corporation, was marked for
22 identification.)

23 - - -

24 THE WITNESS: I see that

1 document, yes.

2 BY MR. KENNEDY:

3 Q. And 104 is the amended
4 second notice of deposition pursuant to
5 Rule 30(b)(6), correct?

6 - - -

7 (Whereupon, CVS-Vernazza
8 Exhibit-104, Amended First Notice
9 of Deposition Pursuant to Rule
10 30(b)(6) and Document Request
11 Pursuant to Rule 30(b)(2) and Rule
12 34 to Defendant CVS Health
13 Corporation, was marked for
14 identification.)

15 - - -

16 THE WITNESS: I see that
17 document as well.

18 BY MR. KENNEDY:

19 Q. And then we have 105 and
20 108, which are two letters from our law
21 firm which are amending and describing
22 further these notices, correct?

23 - - -

24 (Whereupon, CVS-Vernazza

1 Exhibit-105, 9/21/18 Letter from
2 Daniel Goetz to Eric Delinsky, was
3 marked for identification.)

4 - - -

5 (Whereupon, CVS-Vernazza
6 Exhibit-108, 10/22/18 Letter from
7 Daniel Goetz to Eric Delinsky, was
8 marked for identification.)

9 - - -

10 THE WITNESS: I see two
11 letters that I presume to be from
12 your law firm, yes.

13 BY MR. KENNEDY:

14 Q. And I think you've indicated
15 that you are here in response to those
16 notices, and you are speaking on behalf
17 of CVS Indiana, LLC, correct?

18 A. Yes. And CVS RX Services,
19 Inc.

20 Q. That we're going to refer to
21 as the CVS defendants as we move forward.

22 A. Yes.

23 I just want to clarify this
24 notice does say CVS Health. I'm not here

1 on behalf of CVS Health.

2 Q. Let me ask you this: Did
3 only employees of CVS Indiana, LLC and
4 CVS RX Services, Inc. create, develop and
5 manage the suspicious order monitoring
6 policies between 2006 and 2014?

7 MR. DELINSKY: Object to the
8 form.

9 THE WITNESS: To the best of
10 my corporate knowledge, no. And
11 to the extent that the services
12 were performed by entities other
13 than those two entities, on behalf
14 of those two entities, to the
15 topics that have been designated
16 here, I'm prepared to provide
17 testimony on that as well.

18 BY MR. KENNEDY:

19 Q. The other entities that
20 would have provided services to the CVS
21 defendants, with respect to the creation
22 and management of suspicious order
23 monitoring policies, would have been,
24 number one, CVS Pharmacy, Inc., true?

1 MR. DELINSKY: Object to the
2 form.

3 THE WITNESS: CVS Pharmacy,
4 Inc. would have provided some of
5 those services, yes.

6 BY MR. KENNEDY:

7 Q. And CVS Pharmacy, Inc.,
8 would that be the parent or the owner of
9 the CVS defendants?

10 A. Yes.

11 Q. What other CVS entities
12 provided services in the creation or the
13 management of the suspicious order
14 monitoring policies of the CVS
15 defendants?

16 MR. DELINSKY: Object to
17 form.

18 THE WITNESS: I don't have
19 corporate knowledge that there
20 were other such entities involved.
21 There may have been, I don't have
22 that knowledge at this point in
23 time.

24 BY MR. KENNEDY:

1 Q. The first notice that we
2 marked as Exhibit-103, that asks that you
3 would come prepared to provide
4 testimony -- if you look at Page 6, that
5 you would come and be prepared to provide
6 testimony with respect to, A, your
7 past -- and "your" would be the CVS
8 defendants -- past, present suspicious
9 order monitoring system, SOMS program
10 policies and procedures, correct?

11 A. I see that language.

12 Q. And are you prepared to do
13 that today, to provide testimony with
14 regard to that topic that we've outlined
15 as A?

16 MR. DELINSKY: Before you
17 answer, Mr. Vernazza.

18 I would just like to put on
19 the record the fact that written
20 objections were served on
21 plaintiffs by the CVS defendants
22 as to both the first and second
23 notice, and additional
24 correspondence was sent by the --

1 by counsel for the CVS defendants
2 regarding the scope and objections
3 to the topics in the two notices
4 that have been marked as
5 Exhibits-103 and 104.

6 And, of course, there were
7 considerable verbal conversations
8 among counsel for the CVS
9 defendants and plaintiffs
10 regarding the scope of the
11 exhibits. Those are not part of
12 the record as of yet, and I simply
13 would note that the topics in the
14 two notices are subject to the
15 objections and subsequent
16 discussions among counsel.

17 BY MR. KENNEDY:

18 Q. If you'd look at H, if you
19 would, of this notice that was provided
20 to the CVS defendants.

21 And let me ask you, on
22 behalf of the CVS defendants, are you
23 prepared to provide testimony,
24 information and facts with respect to the

1 present policies and procedures related
2 to due diligence following the detection
3 of a suspicious order, past or present?

4 MR. DELINSKY: Object to
5 form. And I simply incorporate,
6 by reference, the remarks I just
7 made regarding the scope of this
8 notice.

9 THE WITNESS: I am prepared
10 to testify as to the due diligence
11 and the process that CVS undertook
12 to identify and report suspicious
13 orders.

14 BY MR. KENNEDY:

15 Q. And if we look at H -- or,
16 excuse me, if we look at I, have you come
17 prepared to provide testimony and facts
18 with respect to the past, present policy,
19 procedure, standards and metrics used to
20 identify orders of unusual size, orders
21 deviating substantially from a normal
22 pattern, and orders of unusual frequency?

23 A. I have, again, prepared to
24 testify, on behalf of the CVS defendants,

1 with respect to the policies --

2 Q. So my answer would be yes --
3 your answer would be yes?

4 MR. DELINSKY: Excuse me,
5 Mr. Vernazza, you can finish your
6 answer.

7 THE WITNESS: With respect
8 to the policies, practices and
9 procedures that CVS used to
10 identify and report suspicious
11 orders.

12 BY MR. KENNEDY:

13 Q. And that would include the
14 policies and procedures and metrics and
15 standards relating to the identification
16 of orders of unusual size, orders
17 deviating substantially from a normal
18 pattern and orders of unusual frequency;
19 is that true?

20 MR. DELINSKY: And I would
21 note again that these topics have
22 been narrowed and have been made
23 subject to objections and
24 discussion among counsel.

1 THE WITNESS: Again, the
2 suspicious order monitoring
3 processes and systems and due
4 diligence conducted in connection
5 with those is a topic that I have
6 undertaken to prepare to provide
7 testimony on today.

8 BY MR. KENNEDY:

9 Q. Would the answer to my
10 question then be yes?

11 A. I'm sorry, could you repeat
12 the question?

13 Q. I want you to listen very
14 carefully to my question, and there's no
15 need for you to repeat my question in
16 your answer, if it doesn't call for it,
17 all right?

18 My question is very simply,
19 Number I, part of the 30(b)(6) notice,
20 have you come prepared to provide
21 testimony with respect to the CVS
22 defendants' past, present, policy,
23 procedures, standards and metrics used to
24 identify orders of unusual size, orders

1 deviating substantially from a normal
2 pattern and orders of unusual frequency?

3 MR. DELINSKY: I just
4 incorporate my comments again
5 regarding the scope of the notice.

6 THE WITNESS: I understand
7 that there's been some narrowing
8 among counsel as to the topics and
9 some objections as to the topics.

10 I am prepared to testify, on
11 behalf of the CVS defendants, with
12 respect to the company's
13 suspicious order monitoring
14 policies, procedures and
15 practices.

16 BY MR. KENNEDY:

17 Q. All right.

18 MR. KENNEDY: Could you read
19 my question back again?

20 I want you to listen to this
21 question very carefully. It's not
22 the one you're answering, but I
23 want you to answer my question.

24 - - -

1 (Whereupon, the court
2 reporter read following part of
3 the record:

4 "Question: My question is
5 very simply, Number I, part of the
6 30(b)(6) notice, have you come
7 prepared to provide testimony with
8 respect to the CVS defendants'
9 past, present, policy, procedures,
10 standards and metrics used to
11 identify orders of unusual size,
12 orders deviating substantially
13 from a normal pattern and orders
14 of unusual frequency?")

15 - - -

16 MR. DELINSKY: I'd like to
17 object to form. I incorporate my
18 comments to the scope of the
19 notice.

20 And, Mr. Kennedy, I would
21 simply note that some, if not
22 many, of the topics set forth in
23 the notice that don't square with
24 what the CVS defendants did or

1 didn't do, making it difficult to
2 answer in any way other than the
3 way that Mr. Vernazza already has
4 answered.

5 BY MR. KENNEDY:

6 Q. Do you want to incorporate
7 the objection into your answer?

8 A. I'm not sure what you mean
9 by that.

10 But to the extent that
11 objections have been made and agreements
12 have been made among counsel to narrow
13 the scope of the topics, I am prepared to
14 testify to that topic.

15 Q. All right. And how have
16 they been narrowed with respect to what
17 we just read? Have they been narrowed
18 with respect to I?

19 MR. DELINSKY: I'm
20 instructing the witness --

21 BY MR. KENNEDY:

22 Q. And I'm talking about -- and
23 I just want to know, from '06 to '14,
24 okay, '06 to '14, Number I, how have they

1 been narrowed that it's going to limit
2 your preparation, your ability to provide
3 us with that testimony and that evidence?

4 MR. DELINSKY: And I would
5 instruct the witness not to answer
6 to the extent it discloses your
7 communications with counsel.

8 THE WITNESS: I've conducted
9 an extensive effort to prepare on
10 the topic of the suspicious order
11 monitoring policies, procedures,
12 practices on behalf of the CVS
13 defendants in preparation for this
14 deposition.

15 BY MR. KENNEDY:

16 Q. And did your preparation
17 include learning and understanding the
18 procedures in relation to unusual size,
19 frequency, and pattern with respect to
20 suspicious orders?

21 MR. DELINSKY: Object to the
22 form.

23 THE WITNESS: That's
24 included in the scope of my

1 preparation.

2 BY MR. KENNEDY:

3 Q. That was easy, wasn't it?

4 We didn't have to take 20 minutes.

5 A. I'm just attempting to

6 answer your question.

7 Q. Work harder.

8 MR. DELINSKY: Objection.

9 Counsel.

10 BY MR. KENNEDY:

11 Q. Can you tell me what efforts

12 you or the CVS defendants have made to

13 provide you with information known or

14 reasonably available to the CVS

15 defendants with respect to the topics

16 that you're going to testify on?

17 A. Yes. I have conducted

18 interviews with current and former CVS

19 personnel. Those interviews number in

20 excess of 40 different individuals that I

21 have interviewed, many individuals on

22 multiple occasions.

23 I have undertaken a review

24 of a number of different documents in

1 preparation for the deposition.

2 I have sat with our current
3 suspicious order monitoring team and
4 watched them perform their work for a
5 good portion of a morning.

6 I have traveled to the
7 Indianapolis distribution center for the
8 purposes of observing their operations
9 and conducting interviews with personnel
10 at that facility.

11 There may be more, but
12 that's what comes to mind.

13 Q. And can you tell me how much
14 time you've put into educating yourself,
15 or being educated, with respect to the
16 suspicious order monitoring systems,
17 programs and procedures at the CVS
18 defendants?

19 A. I can't put a precise time
20 on it. The best of my estimation, the
21 amount of time I've spent preparing for
22 this deposition exceeds four weeks of
23 business days.

24 Q. Did you interview and spend

1 time with Mr. Martoletti?

2 A. I did.

3 Q. And on how many occasions
4 did you speak with him?

5 A. More than one.

6 Q. And what about Ms.
7 Propatier, did you interview her?

8 A. I did.

9 Q. On how many occasions?

10 A. In preparation for this
11 deposition, I believe I interviewed Ms.
12 Propatier one time.

13 Q. And what about Mr. Devlin?

14 A. Yes. I interviewed Mr.
15 Devlin in preparation for this
16 deposition. I spoke with him more than
17 once in preparation.

18 Q. And where did you interview
19 or speak to Mr. Martoletti?

20 A. By telephone.

21 Q. And Mr. Devlin?

22 A. In person and by telephone.

23 Q. And Ms. Propatier, in person
24 or telephone?

1 A. In person.

2 Q. And you understand, as a
3 lawyer, that your testimony here does not
4 necessarily represent your knowledge but
5 represents the knowledge of the CVS
6 defendants? You understand that?

7 A. I understand that as the
8 30(b)(6) deponent here today.

9 Q. And you understand that your
10 testimony here today represents the
11 positions of the CVS defendants on the
12 topics that we're going to talk about?
13 You understand that?

14 MR. DELINSKY: Object to
15 form.

16 THE WITNESS: I understand
17 that I'm being asked to provide
18 corporate testimony.

19 BY MR. KENNEDY:

20 Q. And corporate testimony
21 means you're providing testimony on
22 behalf of the CVS defendant corporations?

23 A. That's my understanding.

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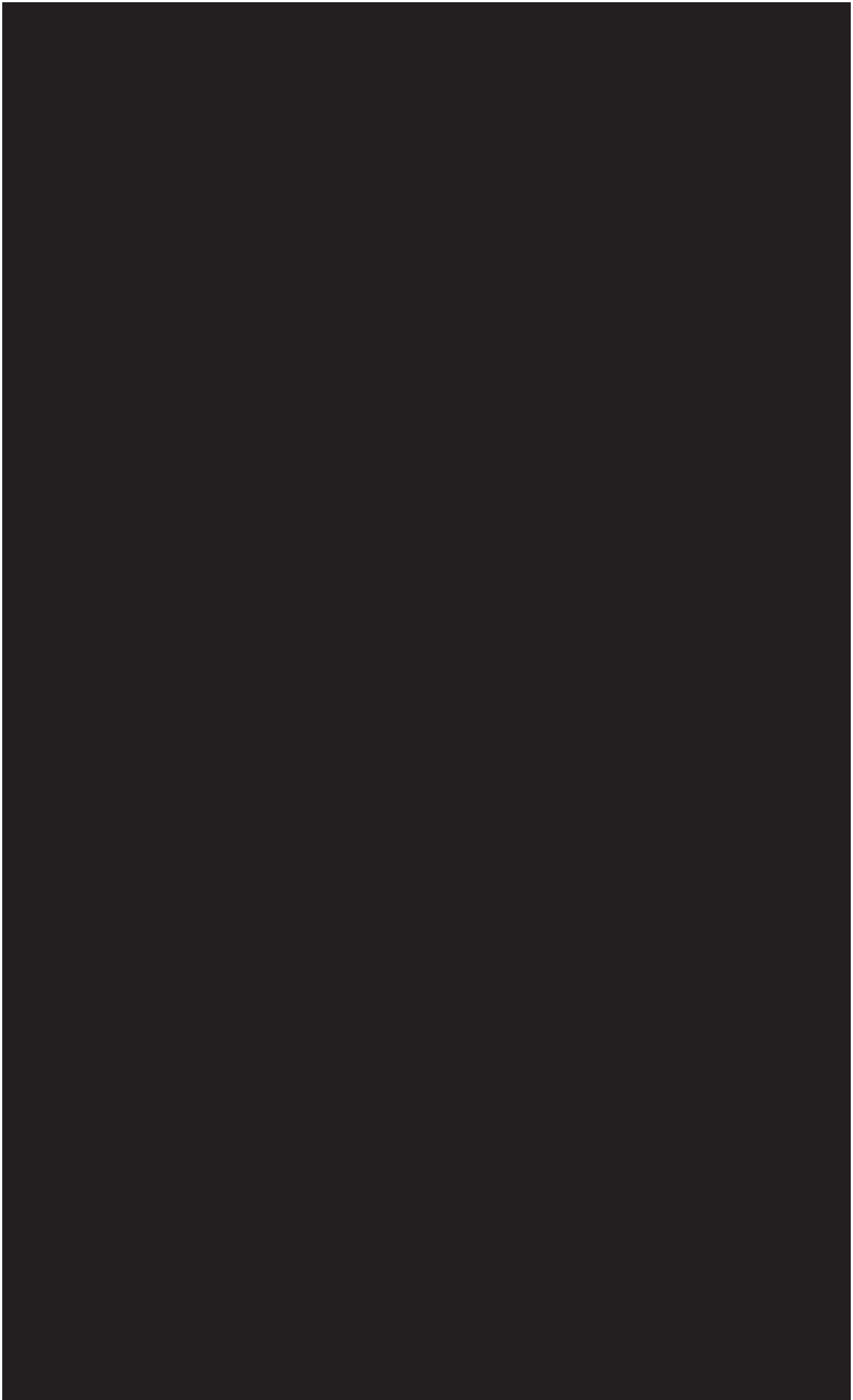
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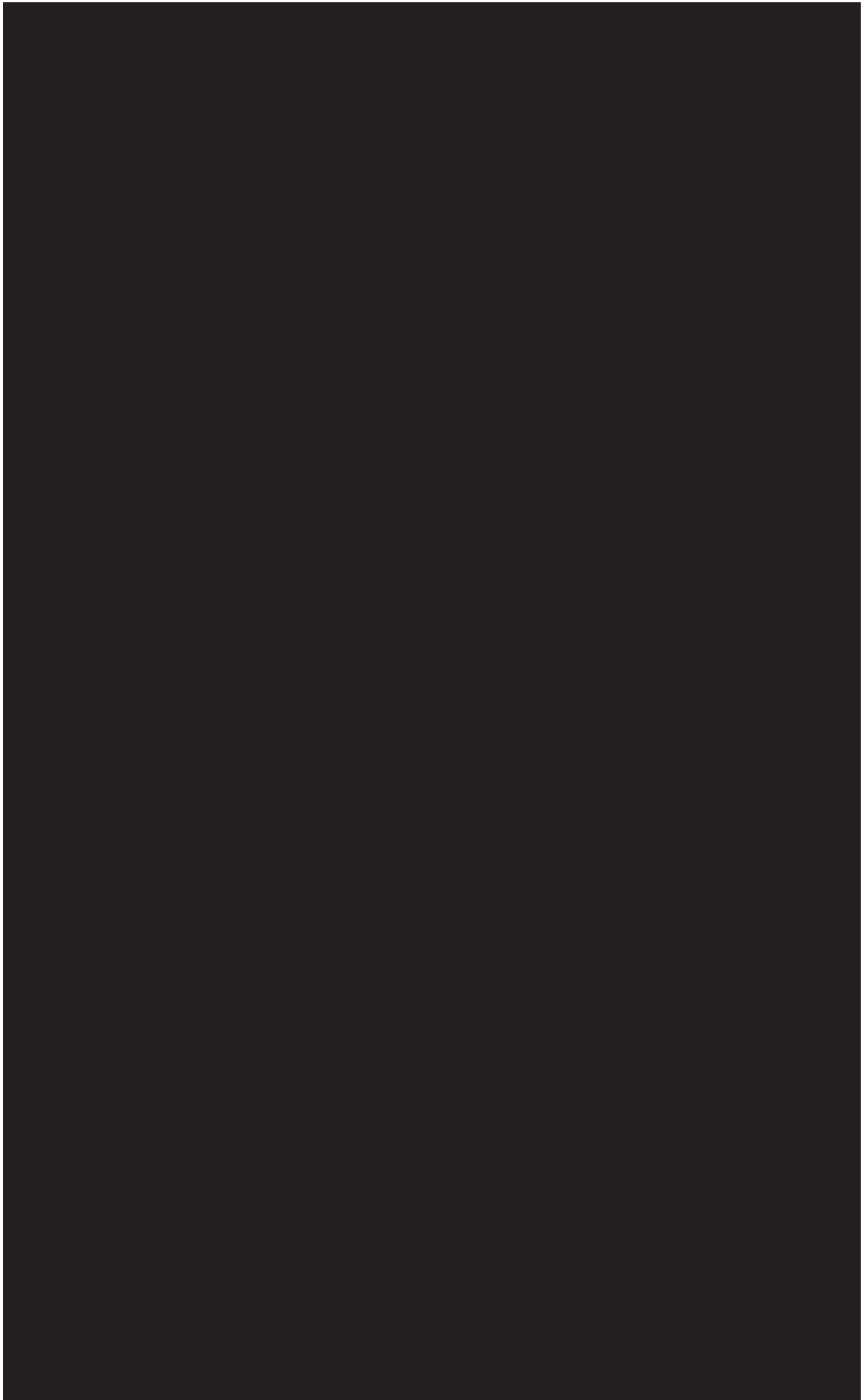
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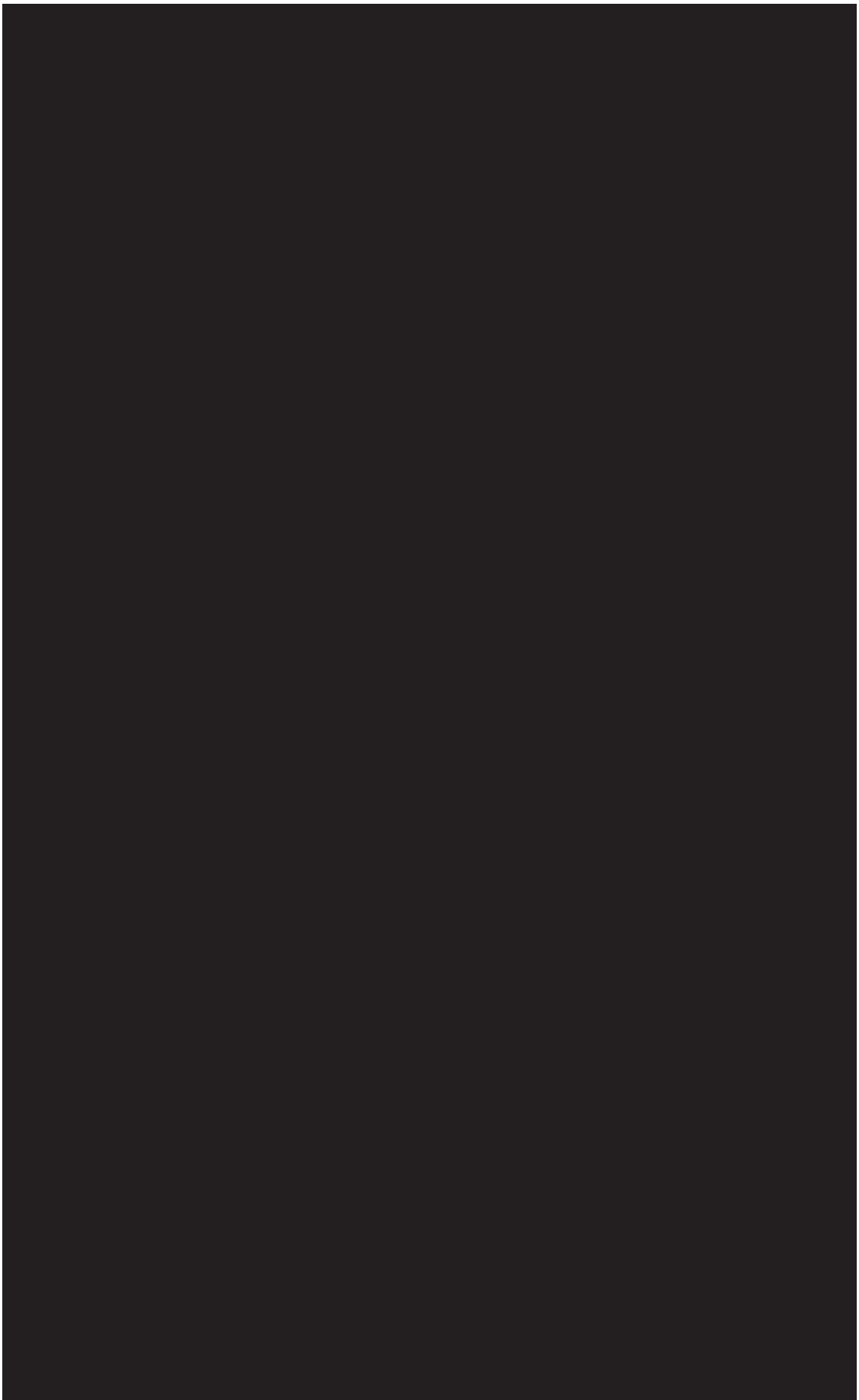
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16 BY MR. KENNEDY:

17 Q. Now, the two CVS defendants
18 both distribute controlled substances,
19 correct?

20 MR. DELINSKY: Object to
21 form.

22 THE WITNESS: Both of
23 these --

24 BY MR. KENNEDY:

1 Q. To CVS pharmacies, correct?

2 A. Both of the CVS entities
3 named as defendants in this case are
4 distributors of controlled substances.
5 They are now, and have always been, only
6 distributors of Schedule III through V
7 controlled substances, and have never
8 been distributors of Schedule II
9 controlled substances.

10 Additionally, those entities
11 have only distributed controlled
12 substances to CVS pharmacies, to the best
13 of my corporate knowledge.

14 Q. So the answer to my question
15 would be yes, correct?

16 MR. DELINSKY: Object to
17 form.

18 THE WITNESS: I think the
19 answer to your question is the
20 answer I provided to your
21 question.

22 BY MR. KENNEDY:

23 Q. Well, the shortened version
24 would be yes, correct?

1 MR. DELINSKY: Object to the
2 form.

3 BY MR. KENNEDY:

4 Q. The two distribution centers
5 that we're talking about, the two CVS
6 defendants, distribute controlled
7 substances to CVS pharmacies; is the
8 answer to that yes?

9 MR. DELINSKY: Object to
10 form. The answer has already been
11 provided.

12 THE WITNESS: The answer is
13 that yes, insofar as we're talking
14 about Schedule III through V
15 controlled substances and only to
16 CVS pharmacies.

17 BY MR. KENNEDY:

18 Q. Unless I'm talking about --
19 unless I specifically let you know, we're
20 talking about Schedule III hydrocodone
21 drugs, all right, that CVS distributed to
22 the CVS pharmacies, all right?

23 A. With respect to --

24 MR. DELINSKY: Object to

1 form. And I don't think there's a
2 question pending, or is there?

3 BY MR. KENNEDY:

4 Q. Do you understand that
5 that's what we're here talking about?
6 We're talking about hydrocodone drugs
7 being distributed by CVS defendants to
8 the CVS pharmacies.

9 You understand that's kind
10 of the topic of the litigation here?

11 MR. DELINSKY: I would just
12 like to -- I object to form. It's
13 hydrocodone combination products.

14 BY MR. KENNEDY:

15 Q. When I say "hydrocodone
16 drugs," you know I'm talking about HCPs
17 or hydrocodone products, all right? You
18 understand that?

19 I think we kind of been
20 through that.

21 MR. DELINSKY: Object to --

22 BY MR. KENNEDY:

23 Q. You understand that?

24 MR. DELINSKY: Object to the

1 shorthand that's being used in the
2 question. There's a question as
3 to whether they are drugs or
4 medicine.

5 BY MR. KENNEDY:

6 Q. Well, CVS refers to them as
7 drugs, don't they, in every one of their
8 standard operating procedures?

9 You've reviewed those.
10 Don't they refer to them as drugs?

11 A. Medications or drugs,
12 certainly.

13 Q. In fact --

14 A. Everything CVS dispenses is
15 an FDA-approved medication.

16 But shorthand, in the
17 industry, may be drugs.

18 Q. Well, shorthand, every --
19 what's the name of your -- the standard
20 operating procedures? Isn't it
21 controlled drugs?

22 A. Sure.

23 Q. Right. So that's a term
24 you're familiar with, right, drugs?

1 A. We're talking about
2 controlled substances that are regulated
3 by the DEA and approved by the FDA.
4 We're not, of course, talking about
5 street drugs.

6 Q. I'm talking about the term
7 "drugs" that you and CVS used in every
8 one of its standard operating procedures.

9 Do you know what I'm talking
10 about?

11 A. I'm --

12 Q. Do you know what I'm talking
13 about when I use the term "controlled
14 drugs"? Do you understand that?

15 MR. DELINSKY: Object to
16 form. If there's a document
17 you're referring to, please show
18 the witness.

19 BY MR. KENNEDY:

20 Q. Do you understand that?

21 A. If you're talking about
22 controlled drugs, I would understand you
23 to be talking about those medications
24 that are scheduled by the DEA as

1 controlled substances.

2 When you say "controlled
3 substances," that may refer to a broader
4 class of controlled substances than
5 simply hydrocodone combination products.

6 Q. Did CVS, from '06 to '14,
7 understand that hydrocodone drugs were
8 highly addictive? Did they understand
9 that?

10 MR. DELINSKY: Object to the
11 form of the question. That is
12 outside the scope of the two
13 deposition notices.

14 To the extent the witness
15 has corporate knowledge, you may
16 answer.

17 THE WITNESS: Could you
18 repeat the question?

19 BY MR. KENNEDY:

20 Q. Did CVS, from 2006 to 2014,
21 did they understand that hydrocodone
22 drugs, HCPs, were a highly addictive
23 drug?

24 MR. DELINSKY: Same

1 objection.

2 THE WITNESS: CVS understood
3 that they were controlled
4 substances in Schedule III,
5 between 2006 and 2014.

6 MR. KENNEDY: Could you read
7 my question back, please?

8 I want you to answer my
9 question.

10 - - -

11 (Whereupon, the court
12 reporter read the following part
13 of the record:

14 "Question: Did CVS, from
15 2006 to 2014, did they understand
16 that hydrocodone drugs, HCPs, were
17 a highly addictive drug?")

18 - - -

19 MR. DELINSKY: Object to
20 form. Object on the grounds that
21 the question is outside the scope
22 of the deposition.

23 Further object on the
24 grounds that the question has been

1 asked and answered directly.

2 THE WITNESS: CVS was
3 familiar with those drugs as being
4 controlled substances in Schedule
5 III. CVS was also aware that
6 controlled substances could be
7 abused or misused.

8 Beyond that, I'm not sure I
9 have corporate knowledge to answer
10 your question.

11 BY MR. KENNEDY:

12 Q. Did CVS understand, between
13 2006 and 2014, that there was an opioid
14 epidemic in the United States of America?

15 MR. DELINSKY: Object to
16 form. Object to the -- on the
17 grounds that that question is
18 outside the scope of the
19 deposition notices.

20 Mr. Kennedy, could you
21 please identify the topic to which
22 this question pertains?

23 MR. KENNEDY: Let me ask the
24 first question.

1 BY MR. KENNEDY:

2 Q. Let me ask you this: If CVS
3 is writing, establishing and putting in
4 place suspicious order monitoring
5 policies, if they're doing that,
6 shouldn't they understand the existence
7 of an epidemic in relation to those
8 substances in the United States of
9 America?

10 MR. DELINSKY: Object to
11 form.

12 BY MR. KENNEDY:

13 Q. Can you answer that?

14 A. I'm not sure that I have
15 corporate knowledge with respect to that
16 question.

17 Q. So CVS has no position on
18 whether or not they should understand the
19 existence of an epidemic in relation to
20 the drugs that it is distributing --

21 MR. DELINSKY: Object to
22 the --

23 BY MR. KENNEDY:

24 Q. -- is that your position?

1 Is that the position of CVS defendants in
2 this case?

3 MR. DELINSKY: Object to
4 form.

5 THE WITNESS: That is not
6 the position of CVS, as you've
7 characterized it.

8 I don't have corporate
9 knowledge to answer your question
10 throughout the time period that
11 you have set forth, in the manner
12 that you've set it forth.

13 It's not a topic that I
14 understood to be part of the
15 topics that I prepared for in the
16 course of preparing for this
17 deposition. And for that reason,
18 at this point in time, I don't
19 have corporate knowledge that can
20 respond to that question.

21 BY MR. KENNEDY:

22 Q. So let me ask you, you
23 didn't think you needed to understand and
24 know whether CVS was aware of an opioid

1 epidemic during the period of time that
2 they are establishing, creating and
3 managing policies and procedures to limit
4 diversion in the shipping of suspicious
5 orders of the drugs? You didn't find a
6 need to prepare on that topic?

7 MR. DELINSKY: Object to
8 form. You're referring to a
9 topic, Mr. Kennedy.

10 I'm going to make my second
11 request for you to identify the
12 topic that questions regarding a
13 potential opioid epidemic pertain
14 to before we proceed any further.

15 MR. KENNEDY: And I'll go
16 back to my question.

17 BY MR. KENNEDY:

18 Q. Does CVS believe, does CVS
19 take the position that it was necessary
20 for them to understand the opioid
21 epidemic in this country when they were
22 writing policies and procedures to
23 monitor the drugs that they were selling
24 that were involved in this epidemic?

1 MR. DELINSKY: Object to
2 form. Object on -- to the extent
3 it's outside -- insofar as it's
4 outside the scope of the
5 deposition notice.

6 THE WITNESS: The company
7 took steps to comply with the
8 Controlled Substances Act, with
9 the regulations promulgated under
10 the Controlled Substances Act, and
11 state law, and for its pharmacists
12 to dispense legitimate
13 prescriptions to patients for
14 the -- legitimate medical
15 purposes.

16 BY MR. KENNEDY:

17 Q. Did I ask you -- did I just
18 ask you whether or not they made efforts
19 to conform to the law? Did I ask you
20 that?

21 MR. DELINSKY: Object to the
22 form of the question.

23 BY MR. KENNEDY:

24 Q. Did I ask you that question?

1 MR. DELINSKY: I object to
2 the form of the question.

3 MR. KENNEDY: That's fine.

4 MR. DELINSKY: You
5 effectively did.

6 MR. KENNEDY: If we could
7 just take a moment.

8 You know, the protocols with
9 respect to depositions say you are
10 allowed to object, but you are not
11 allowed to give a speech prior to
12 every single answer. You're not
13 allowed to do that.

14 You're allowed to object,
15 and that is all you're allowed to
16 do, in the protocols that we
17 absolutely, positively negotiated
18 for a long time.

19 This deposition is taking
20 twice as long as it needs to do,
21 because you are repeating my
22 question, and your objection is as
23 long as my question, for every
24 question. And I just don't think

1 you're allowed to do that. I
2 would ask that you stop doing
3 that.

4 MR. DELINSKY: Mr. Kennedy,
5 I think the record will speak to
6 itself on that subject, number
7 one.

8 Number two, we have asked
9 you now three times to identify
10 the topic to which this line of
11 questioning pertains, and you have
12 not identified one.

13 MR. KENNEDY: Very, very
14 simply. If you're writing
15 policies to monitor the drugs that
16 you're selling, you should know
17 about the death and the addiction
18 that those drugs are causing, when
19 you are writing those policies.
20 And the topic here is their
21 efforts to write those policies.

22 Now, if this witness
23 believes that CVS had no need to
24 know about the people that these

1 drugs were killing and addicting,
2 when writing those policies, then
3 he should say so, and I will move
4 on.

5 But if he agrees with me
6 that they should know about the
7 people that these drugs are
8 killing and addicting, when they
9 write their policies with respect
10 to the sale of these drugs to our
11 communities, then he should answer
12 the questions about what they knew
13 with respect to the epidemic.
14 That's very simple.

15 So I'll ask my question
16 again, and I want you to listen
17 carefully.

18 MR. DELINSKY: I --

19 MR. KENNEDY: Go ahead.

20 MR. DELINSKY: Before you
21 do --

22 MR. KENNEDY: Yes.

23 MR. DELINSKY: I object to
24 your commentary. It's laden --

1 MR. KENNEDY: I object to
2 your --

3 MR. DELINSKY: It's laden
4 with factual assumptions. It's
5 not appropriate for the deposition
6 to be giving speeches or opening
7 statements.

8 And I have now asked you for
9 a fifth time to direct us to the
10 particular topic to which you
11 believe this line of question
12 pertains so that we may evaluate
13 it.

14 MR. KENNEDY: And it's the
15 topics we read into the record.
16 Their policies and procedures with
17 respect to suspicious order
18 monitoring.

19 BY MR. KENNEDY:

20 Q. Let me ask you -- let me ask
21 you a very simple question.

22 Do you believe that CVS
23 should have been aware of the existence
24 of the opioid epidemic, between '06 and

1 2014, while they were creating,
2 preparing, managing their suspicious
3 order monitoring policy?

4 MR. DELINSKY: Object to
5 form. Object as outside the scope
6 of the notice.

7 THE WITNESS: That is not a
8 topic on which I have undertaken
9 preparation for this deposition,
10 and for that reason is a topic on
11 which I do not have corporate
12 knowledge to provide at this time.

13 BY MR. KENNEDY:

14 Q. Do you know whether or not
15 CVS was aware of the extent of the opioid
16 epidemic between 2006 and 2014, as a
17 distributor of opioids to CVS pharmacies?

18 MR. DELINSKY: Object to
19 form. Object as outside the scope
20 of the deposition notice --
21 notices, plural.

22 THE WITNESS: To the best of
23 my corporate knowledge, CVS was
24 aware that hydrocodone combination

1 products were Schedule III
2 products during that time period,
3 and that CVS took steps to comply
4 with the law with respect to
5 Schedule III controlled
6 substances.

7 MR. KENNEDY: Would you read
8 the question back, please?

9 MR. DELINSKY: Excuse me,
10 were you done with your answer?

11 THE WITNESS: Yes.

12 - - -

13 (Whereupon, the court
14 reporter read the following part
15 of the record:

16 "Question: Do you know
17 whether or not CVS was aware of
18 the extent of the opioid epidemic
19 between 2006 and 2014, as a
20 distributor of opioids to CVS
21 pharmacies?")

22 - - -

23 THE WITNESS: Again, Mr.
24 Kennedy, that is not a topic that

1 I understood to be part of the
2 noticed topics that I prepared for
3 in preparation for this
4 deposition.

5 So I don't have corporate
6 knowledge that I can provide on
7 the topic at this time.

8 MR. DELINSKY: And I would
9 just like to ensure that my -- I
10 objected on two grounds to that
11 same question and that those are
12 incorporated into the read back
13 question.

14 BY MR. KENNEDY:

15 Q. Did CVS know, by 2010, that
16 prescription drugs were killing more
17 people in America than heroin and cocaine
18 combined?

19 MR. DELINSKY: Object to
20 form. Object as outside the scope
21 of the notice.

22 I'd ask Mr. Kennedy, as to
23 this question, if he could
24 identify a particular topic in

1 your notices to which this
2 question pertains.

3 THE WITNESS: Again, that is
4 not a topic that I undertook to
5 prepare on in advance of this
6 deposition. CVS was aware of
7 hydrocodone combination products
8 being Schedule III controlled
9 substances. CVS was aware, and
10 has been aware at various times,
11 that those products can be abused
12 and misused.

13 MR. KENNEDY: We need to
14 call the Special Master, just to
15 try to get the parameters down.
16 Can we take a break?

17 MR. DELINSKY: I think
18 they're in court.

19 - - -

20 (Whereupon, a discussion off
21 the record occurred.)

22 - - -

23 MR. DELINSKY: Mr. Kennedy,
24 again, I've asked you for -- to

1 identify a topic to which your
2 questions about CVS's knowledge
3 about the opioid epidemic pertain.
4 And if you identify it, we, of
5 course, will consider it. But you
6 haven't identified one.

7 BY MR. KENNEDY:

8 Q. We're going to take a look
9 at Exhibit-1.

10 - - -

11 (Whereupon, CVS-Vernazza
12 Exhibit-1, United States Code -
13 Section 823, was marked for
14 identification.)

15 - - -

16 BY MR. KENNEDY:

17 Q. Have you seen this before,
18 Exhibit-1?

19 A. I haven't seen this
20 particular printout before. But I
21 presume this to be a printout from the
22 Controlled Substances Act, resources on
23 the DEA website.

24 Q. Does it say Title 21, United

1 States Code, Controlled Substances Act?

2 A. That's what it says.

3 Q. Are you familiar with that
4 act?

5 A. I am generally familiar with
6 the Controlled Substances Act, yes.

7 Q. Did you review that in
8 preparation for your understanding of the
9 testimony you would be providing today?

10 A. I have reviewed certain
11 components of the Controlled Substances
12 Act.

13 Q. When did CVS, the CVS
14 defendants, first become aware of the
15 Controlled Substances Act of 1971?

16 MR. DELINSKY: Object to
17 form. It's outside the scope of
18 the notice.

19 THE WITNESS: I have no
20 corporate knowledge that CVS has
21 ever been unaware of the
22 Controlled Substances Act.

23 BY MR. KENNEDY:

24 Q. Should they have been aware

1 of it in 2006?

2 A. I understand that in 2006
3 CVS was aware of the Controlled
4 Substances Act.

5 Q. Did you hear my question?

6 MR. DELINSKY: Object to
7 form.

8 THE WITNESS: I thought I
9 answered it.

10 BY MR. KENNEDY:

11 Q. My question was, should CVS
12 have been aware of the Controlled
13 Substances Act in 2006?

14 MR. DELINSKY: Object to
15 form. Asked and answered.

16 BY MR. KENNEDY:

17 Q. I didn't ask you whether
18 they were, I asked you should.

19 Should they have been aware
20 of it in 2006, the Controlled Substances
21 Act? Should they have been?

22 A. As a --

23 MR. DELINSKY: Excuse me.

24 Object to form. Object as

1 outside the scope of the notice.
2 Object as outside the scope of
3 Special Master Cohen's rulings on
4 the deposition notices. And
5 object on the grounds that the
6 question has been asked and
7 answered.

8 THE WITNESS: In 2006, CVS
9 was a DEA registrant in a number
10 of different capacities, and so
11 surely CVS would have been aware
12 of the Controlled Substances Act,
13 which provides for such licensure.

14 BY MR. KENNEDY:

15 Q. Should have been aware and
16 were aware; is that your answer?

17 A. Yes.

18 Q. Do you know how CVS became
19 aware of this, the Controlled Substances
20 Act?

21 MR. DELINSKY: Object to
22 form. Object to scope, on scope
23 grounds as well.

24 THE WITNESS: That's not

1 something on which I have
2 corporate knowledge.

3 BY MR. KENNEDY:

4 Q. Look at Number E, if we can
5 scroll down.

6 Look at E, if you would,
7 E(1).

8 A. I just need to take a minute
9 to review the rest of the document, if
10 you would.

11 Q. All of E, please. All of E
12 plus (1).

13 Now, E, E is titled,
14 Distributors of Controlled Substances in
15 Schedule III, IV or V.

16 Do you see that?

17 A. Yes. If you could wait just
18 a second. I'm still reviewing the
19 document.

20 Yes, sir. I'm ready for
21 your question.

22 Q. E is titled, Distributors of
23 Controlled Substances in Schedules III,
24 IV and V, correct?

1 A. That's what I see here.

2 Q. That would include the CVS
3 distributors?

4 A. CVS distributors were
5 distributors of controlled substances in
6 Schedules III, IV and V, that is correct.

7 Q. Would the answer to my
8 question be yes?

9 MR. DELINSKY: Object to
10 form.

11 THE WITNESS: I think your
12 question was, and the CVS
13 distributors. I was providing an
14 answer to your question.

15 BY MR. KENNEDY:

16 Q. This is a yes-or-no
17 question, all right? I'm just going to
18 give you a kind of heads up, it's a
19 yes-or-no question, all right? So listen
20 very carefully.

21 Would E, what we just read,
22 apply to CVS as a distributor of Schedule
23 III opioids?

24 MR. DELINSKY: Object to

1 form.

2 THE WITNESS: And my
3 response was that CVS distributors
4 were distributors of Schedule III
5 opioids.

6 BY MR. KENNEDY:

7 Q. So the answer -- let me ask
8 you: Were you told to repeat my question
9 in every answer so that this would take
10 longer?

11 MR. DELINSKY: Object to
12 form. I instruct you not to
13 answer that question.

14 BY MR. KENNEDY:

15 Q. I just asked a simple
16 yes-or-no, question and you have to
17 repeat my entire question in your answer.
18 The time we are wasting isn't fair to
19 anybody here.

20 So if it's a yes-or-no
21 question, then please answer yes or no.
22 If you need to explain, then please go
23 ahead and explain. All right?

24 A. I didn't understand that to

1 be a yes-or-no question.

2 Q. Under E, it then states, The
3 attorney general shall register an
4 applicant to distribute controlled
5 substances in Schedules III, IV or V,
6 unless he determines that the issuance of
7 such registration is inconsistent with
8 the public interest. In determining the
9 public interest, the following factors
10 shall be considered. 1, maintenance of
11 effective controls against diversion of
12 particular controlled substances into
13 other than legitimate medical, scientific
14 and industrial channels.

15 Did I read that correctly?

16 A. I believe you did.

17 Q. Did you understand and did
18 CVS understand that to be what this act
19 of Congress stated in 1971?

20 MR. DELINSKY: Object to
21 form. Object on scope grounds.

22 THE WITNESS: I am not sure
23 I understood the question.

24 Could you repeat it?

1 BY MR. KENNEDY:

2 Q. Was CVS aware of that
3 statement by Congress in this act as of
4 2006?

5 MR. DELINSKY: Object to
6 form.

7 THE WITNESS: I don't have
8 corporate knowledge as to the
9 extent of CVS's knowledge of that
10 particular provision at that
11 particular point in time.

12 I can say that CVS was a
13 registrant and would have applied
14 and met the standard set forth
15 here in order to receive a
16 registration.

17 BY MR. KENNEDY:

18 Q. Fine. So can we agree that
19 CVS certainly should have been aware of
20 E(1) in 2006 as a registrant and as a
21 distributor of controlled substances?

22 MR. DELINSKY: Object to
23 form.

24 BY MR. KENNEDY:

1 Q. True?

2 A. CVS is aware of the
3 Controlled Substances Act. This is a
4 provision that refers to what the
5 attorney general should do upon
6 application for a registration by a
7 potential registrant.

8 And as I have said, CVS was
9 a registrant in 2006.

10 Q. Can we agree that CVS should
11 have been aware of E(1) that we just read
12 in relation to the maintenance of
13 effective controls against diversion?
14 CVS should have been aware of E(1) in
15 this statute by the United States
16 Congress in 2006? Should have been aware
17 of it, correct?

18 MR. DELINSKY: Object to
19 form.

20 THE WITNESS: Again, I don't
21 have corporate knowledge as to the
22 particular nature in which CVS was
23 aware of this particular
24 provision, which applies to the

1 attorney general in acting upon
2 applications for registrations.

3 I do know that CVS would
4 have applied for a registration
5 and received one, presumably
6 consistent with the provision of
7 the Controlled Substances Act.

8 I'm aware of no information
9 suggesting that CVS was not aware
10 of the Controlled Substances Act
11 in general.

12 BY MR. KENNEDY:

13 Q. And I asked you whether they
14 should have been aware of it, not whether
15 they were or whether they were not. I
16 haven't asked you whether they agreed or
17 disagreed. I haven't asked you for any
18 legal interpretation.

19 I'm asking you, should CVS
20 have been aware of this statement by
21 Congress contained in E(1) that we have
22 read? Should they have been aware of
23 this in 2006? That's my question.

24 MR. DELINSKY: Object to

1 form. Object on the grounds that
2 it's outside the scope of the
3 notices.

4 THE WITNESS: I really don't
5 know --

6 MR. DELINSKY: Object as
7 asked and answered.

8 THE WITNESS: I don't know
9 what you mean by "should." I'm
10 trying to answer the best way I
11 can, based on the factual
12 corporate knowledge that I have.

13 BY MR. KENNEDY:

14 Q. As someone or a registrant
15 that is attempting to maintain effective
16 controls against diversion, should they
17 have known of the existence of E(1), the
18 statement by the United States Congress
19 in 1971? Should they have known that?

20 MR. DELINSKY: Same
21 objections.

22 THE WITNESS: Sir, I think
23 that's the same question you've
24 now asked me several times. I can

1 give you the same answer, which is
2 that this is a provision of the
3 Controlled Substances Act. I have
4 no reason to believe that CVS
5 wasn't aware of the Controlled
6 Substances Act.

7 This particular provision
8 appears to apply to the attorney
9 general.

10 MR. KENNEDY: I'm just going
11 to note in the record your refusal
12 to answer my question.

13 THE WITNESS: Sir, I don't
14 believe I'm refusing to answer
15 your question. I'm trying to
16 answer your question to the best
17 of my ability.

18 BY MR. KENNEDY:

19 Q. Do you know what the word
20 "should" means? I mean, you understand
21 my question. I mean, you're a lawyer.

22 You have taken depositions
23 in the past, have you not?

24 A. I have taken depositions.

1 Q. How many?

2 A. A handful.

3 Q. And when I ask you, should
4 they have been aware of this provision
5 and this statute, do you not know what I
6 mean? Whether or not they should have
7 been aware of it as opposed to were they
8 aware of it. I'm asking you should they
9 have been.

10 MR. DELINSKY: Object to
11 form.

12 THE WITNESS: I really don't
13 understand your question as to
14 "should have been" with respect to
15 this particular provision.

16 Again, I have no reason to
17 believe that CVS, as a DEA
18 registrant, was not aware of the
19 Controlled Substances Act,
20 including this provision, as of
21 2006.

22 MR. DELINSKY: Let's take a
23 break. We've been on the record
24 for about 50 minutes.

1 VIDEO TECHNICIAN: The time
2 is 10:26 a.m. We're going off the
3 record.

4 - - -

5 (Whereupon, a brief recess
6 was taken.)

7 - - -

8 VIDEO TECHNICIAN: The time
9 is 10:44 a.m. And we're back on
10 the record.

11 BY MR. KENNEDY:

12 Q. Sir, you understand when I
13 say "CVS," I mean the CVS defendants in
14 this case? You understand that?

15 A. Okay. I think you had
16 defined the CVS defendants earlier to me,
17 the two defendants in the case.

18 You're now saying you want
19 to further define the CVS defendants as
20 just CVS?

21 Q. Yes. When I ask you a
22 question, when I say "CVS," "CVS
23 defendants," I'm meaning the same thing.

24 Do you understand that?

1 A. I'm not sure I have
2 understood that to this point.

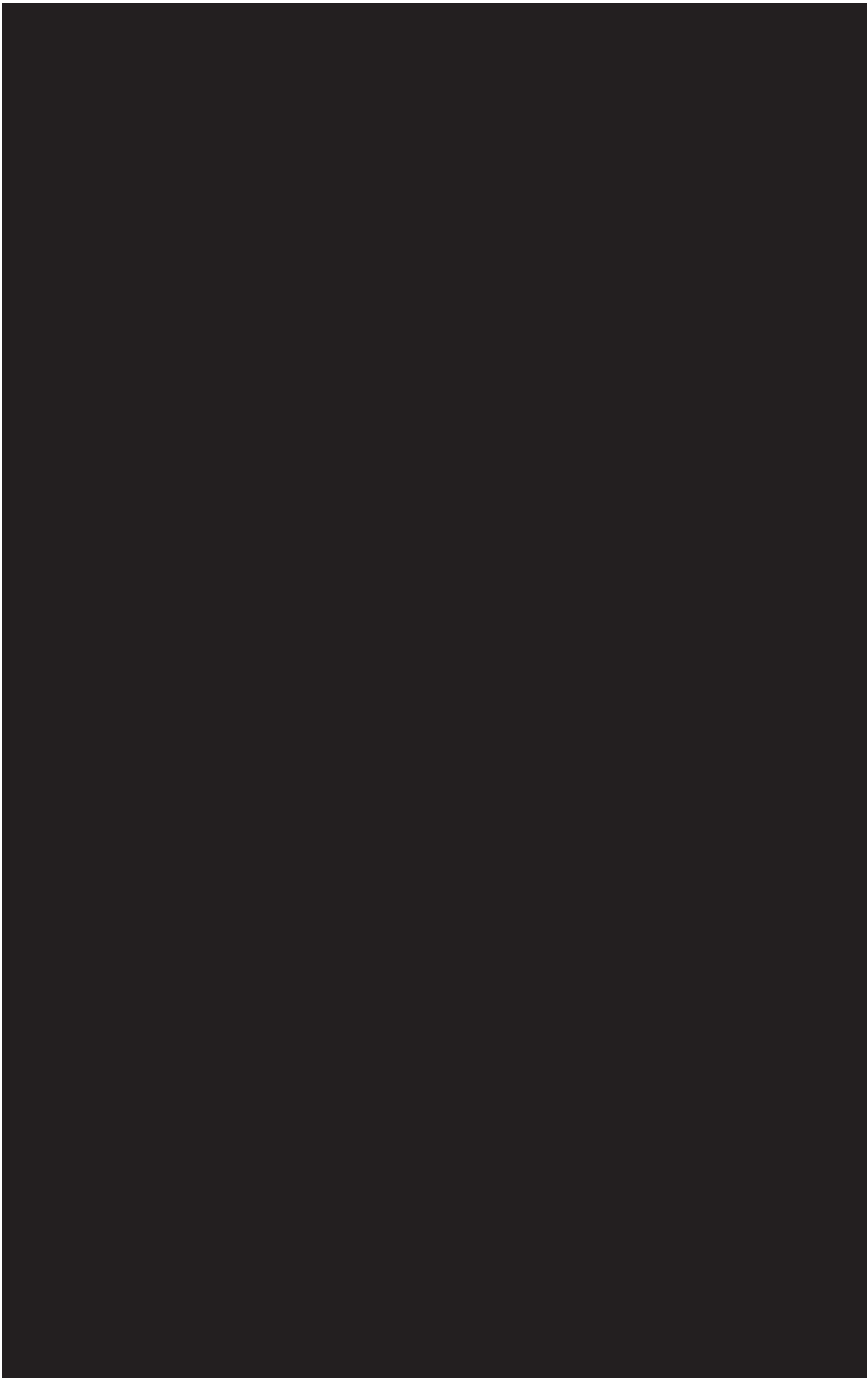
3 When I might use the term
4 "CVS," I might speak to CVS more broadly
5 than just the CVS defendants.

6 Q. When I say "CVS," I mean the
7 defendants, unless I say otherwise, all
8 right?

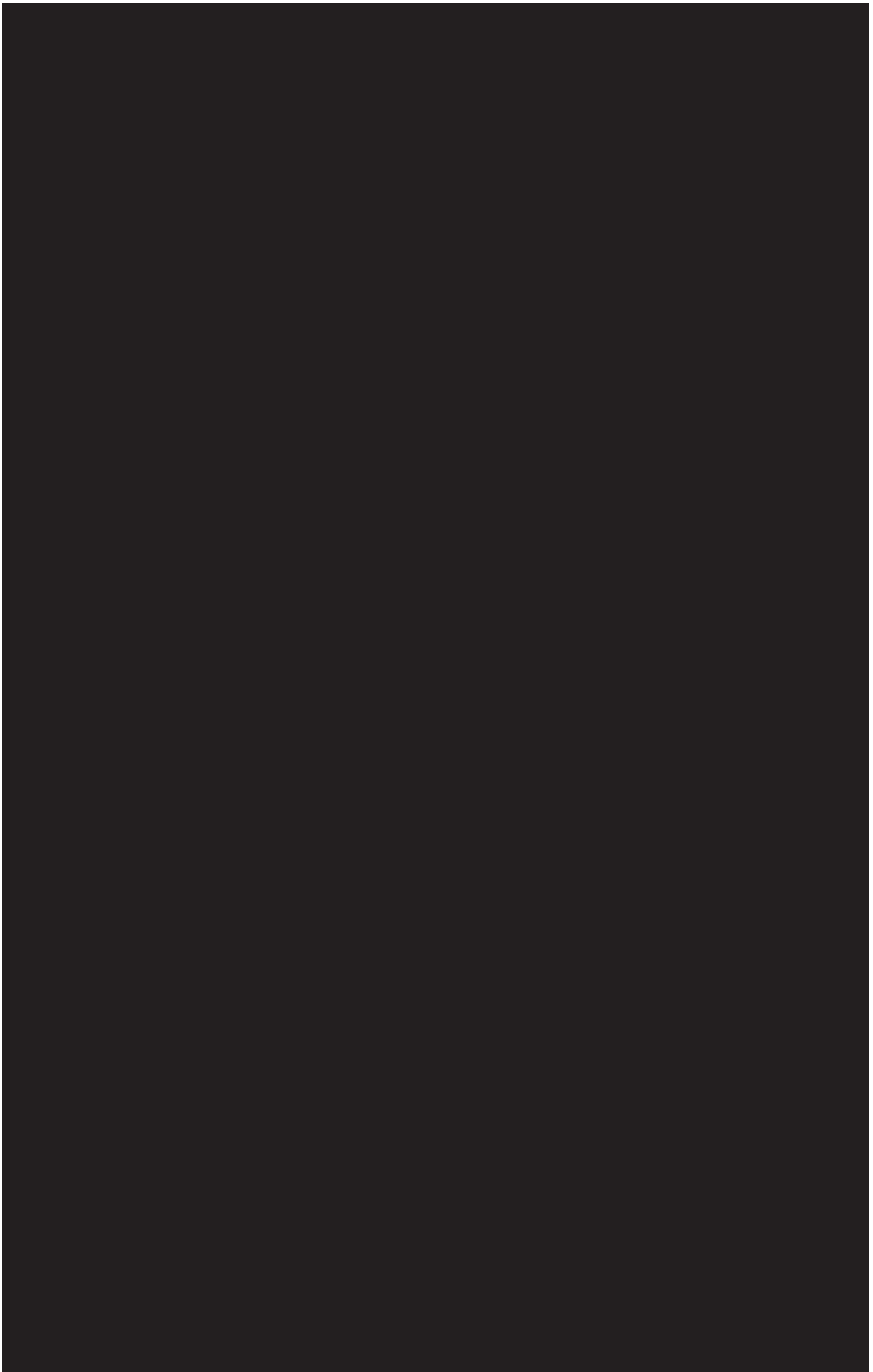
9 A. I will try to keep that in
10 mind.

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BY MR. KENNEDY:

Q. In '06 and '07, did the CVS distributors, or any CVS entity, including CVS Pharmacy, Inc., have any meetings with the DEA to talk about controlled substance monitoring?

MR. DELINSKY: Object to form. Object as outside the scope, to the extent it's outside the scope of the deposition notice.

BY MR. KENNEDY:

Q. Do you know?

1 A. Could you set forth the time
2 period again?

3 Q. In '06 or '07 or '08, did
4 the CVS defendants, or any CVS entity,
5 including CVS Pharmacy, Inc., have any
6 meetings with the DEA to talk about
7 suspicious order monitoring of controlled
8 substances?

9 MR. DELINSKY: Same
10 objections.

11 THE WITNESS: I do not have
12 corporate knowledge as to whether
13 or not the CVS defendants, as
14 you've used the term, or CVS
15 Pharmacy, Inc. had a meeting with,
16 for instance, DEA headquarters
17 concerning suspicious order
18 monitoring.

19 DEA does regularly inspect
20 and conduct audits of our
21 distribution facilities, and so
22 there may have been conversations
23 about suspicious order monitoring
24 in one of our facilities during

1 one of those types of interactions
2 during that time period.

3 I just don't know for
4 certain as I sit here.

5 BY MR. KENNEDY:

6 Q. When, if ever -- well, when.
7 When did the CVS defendants, when did
8 they become aware of the Know Your
9 Customer requirement or program of the
10 DEA?

11 MR. DELINSKY: Object to
12 form.

13 THE WITNESS: I don't have
14 corporate knowledge as to when
15 exactly CVS would have acquired
16 knowledge of the DEA's Know Your
17 Customer language.

18 I do know that CVS received
19 at least some correspondence from
20 the DEA that, to the best of my
21 recollection, references that type
22 of language.

23 BY MR. KENNEDY:

24 Q. And when the DEA talks about

1 Know Your Customer, did CVS understand
2 that to mean the customer being the CVS
3 pharmacies that you were distributing
4 hydrocodone drugs to?

5 MR. DELINSKY: Object to
6 form.

7 THE WITNESS: Yes. The only
8 customers that distribution
9 centers would have would be the
10 CVS stores.

11 BY MR. KENNEDY:

12 Q. And if there is evidence
13 throughout this case that in '07, '08 the
14 DEA communicated to distributors across
15 the country the Know Your Customer
16 program and requirement, do you have any
17 knowledge that would indicate that CVS
18 was unaware of the Know Your Customer
19 program by the DEA?

20 MR. DELINSKY: Object to
21 form.

22 THE WITNESS: I do not have
23 any specific corporate knowledge
24 that the company was unaware of

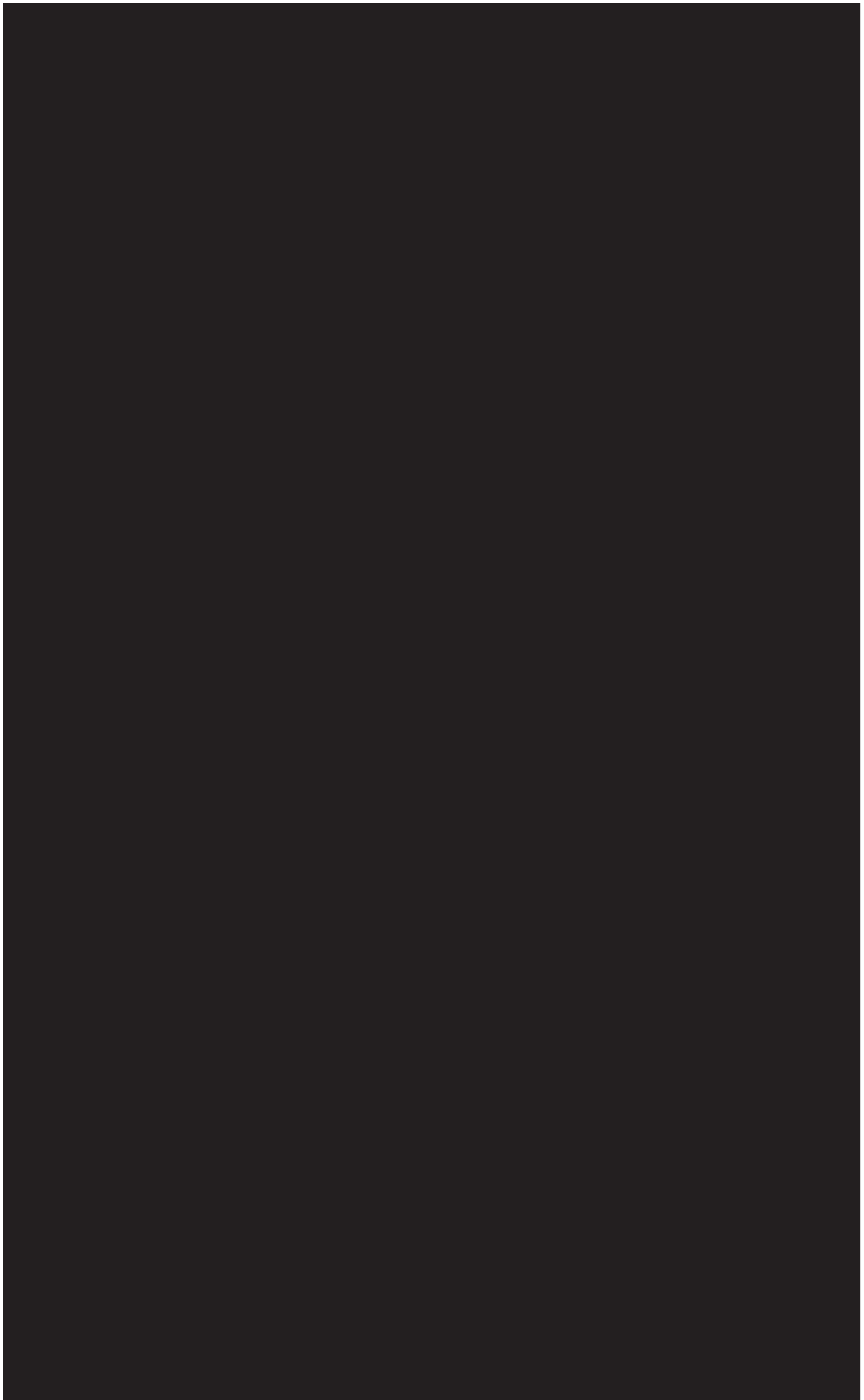
1 that concept being communicated by
2 the DEA.

3 BY MR. KENNEDY:

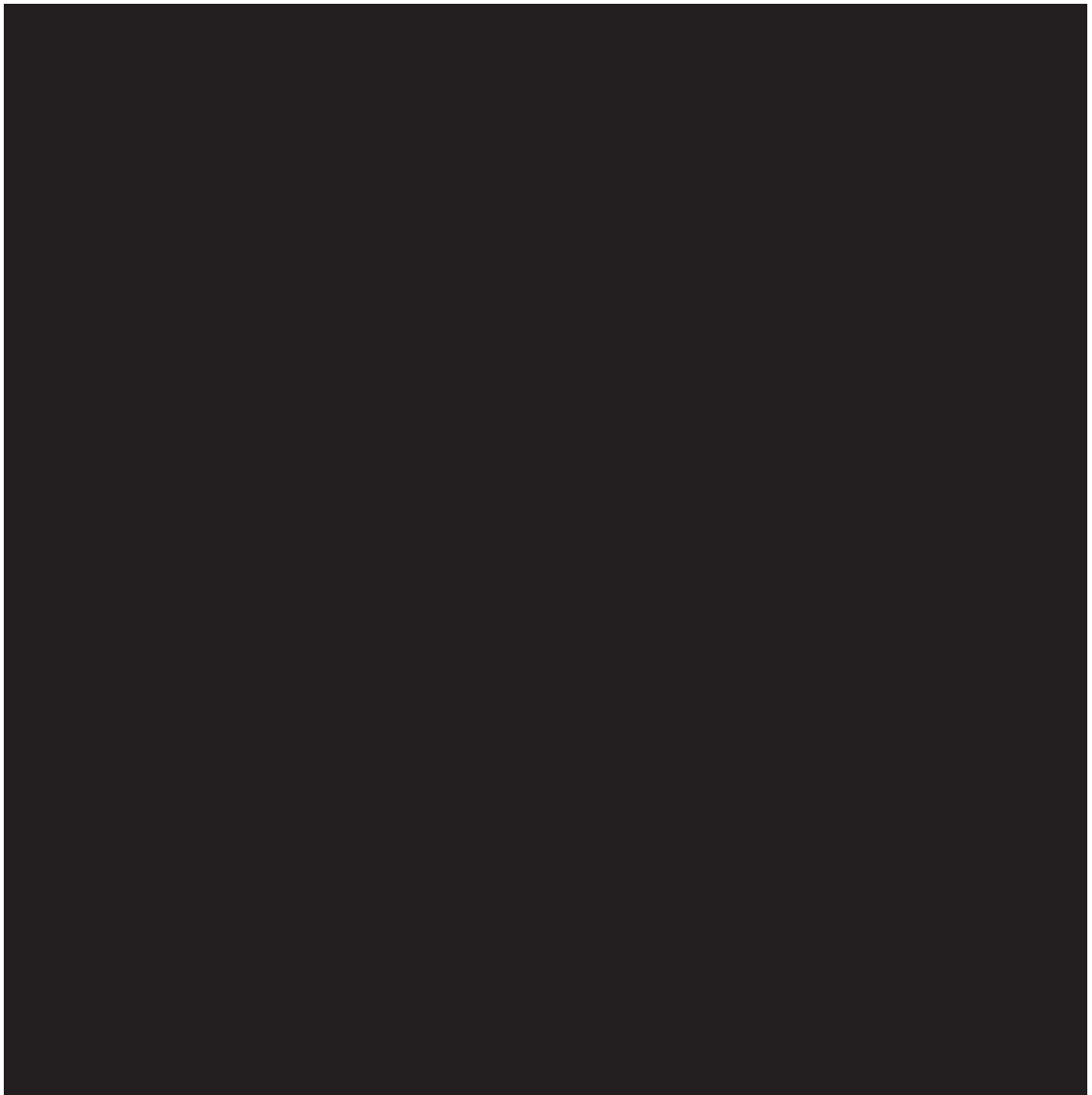
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MR. KENNEDY: Exhibit-3,
please. We're going to look at
Exhibit-3, the first of the DEA
letters I think you referenced to.

- - -

(Whereupon, CVS-Vernazza
Exhibit-3,
CVS-MDLT1-000010552-555, was
marked for identification.)

1 - - -

2 BY MR. KENNEDY:

3 Q. Do you know who Mr.
4 Rannazzisi is?

5 A. I do.

6 Q. And who is he?

7 A. Mr. Rannazzisi is a former
8 official with the DEA with
9 responsibilities for oversight over the
10 DEA's diversion control organization.

11 Q. If you'll take a look at
12 Exhibit-3, that is a letter, is it not,
13 from the United States Department of
14 Justice, Drug Enforcement Administration,
15 which is the DEA, correct?

16 A. The Drug Enforcement
17 Administration is what I would consider
18 to be the DEA, yes.

19 Q. September 27, 2006 is the
20 date of this letter, true?

21 A. The letter appears to be
22 dated September 27, 2006.

23 Q. CVS Indiana, LLC, one of the
24 defendants in this case, it appears as if

1 they received this letter, true?

2 A. To the best of our corporate
3 knowledge, that is true.

4 Q. And who was this letter
5 shared with? Was this shared with CVS
6 Pharmacy, Inc. at this point in time, in
7 2006, around September?

8 A. I do not have corporate
9 knowledge as to who this particular
10 letter may have been shared with at CVS
11 Pharmacy, Inc., or if this letter was
12 shared with anyone at CVS Pharmacy, Inc.

13 Q. And you don't know whether
14 it was shared with the other defendant,
15 the other distributor defendant in this
16 case, CVS RX Services?

17 A. I, likewise, don't have
18 corporate knowledge of that.

19 MR. DELINSKY: Just so the
20 record is clear, and Mr. Kennedy,
21 I don't mean to take your time, so
22 we can excise this 30 seconds, but
23 the CVS RX Services, Inc. did not
24 open its distribution center, I

1 may not have the date right, until
2 2011 or 2012.

3 MR. KENNEDY: Fine. Thank
4 you.

5 BY MR. KENNEDY:

6 Q. The letter, Exhibit-3, from
7 the DEA to one of the CVS defendants,
8 let's look at the first sentence, if we
9 could.

10 It states, This letter is
11 being sent to every commercial entity in
12 the United States registered with the
13 Drug Enforcement Administration (DEA) to
14 distribute controlled substances.

15 CVS Indiana, at that point
16 in time, was a registrant, correct?

17 A. To my understanding, that's
18 correct.

19 Q. And we don't know whether
20 CVS Pharmacy, Inc. was a registrant to
21 distribute at this time; would that be
22 true?

23 A. I don't have corporate
24 knowledge of that.

1 Q. Look at the first sentence
2 under background, if you would.

3 And does it state, and this
4 is the DEA to CVS Indiana, As each of you
5 is undoubtedly aware, the abuse
6 (nonmedical use) of controlled
7 prescription drugs is a serious and
8 growing health problem in this country.

9 Do you see that statement?

10 A. I do.

11 Q. Was, I'm assuming, then, CVS
12 Indiana, at this point in time, was aware
13 of that statement in 2006, that statement
14 by the DEA?

15 A. To the best of my corporate
16 knowledge, CVS received this letter --
17 CVS Indiana received this letter and
18 would have reviewed its contents,
19 including that sentence.

20 Q. Do you know whether CVS
21 Indiana, or any other CVS entity,
22 disagreed with that statement in 2006?

23 MR. DELINSKY: Object to
24 form. Object on scope grounds, to

1 the extent the question
2 encompasses any other CVS entity.

3 THE WITNESS: I have no
4 knowledge that CVS disagreed with
5 that.

6 BY MR. KENNEDY:

7 Q. Look to the third paragraph
8 over to the right, four lines down, that
9 starts with, Distributors are.

10 You can look at that whole
11 sentence.

12 The sentence states,
13 Distributors are, of course, one of the
14 key components of the distribution chain.

15 Does CVS disagree with that
16 statement, do you know, in 2006? And the
17 CVS Indiana, I'm talking about.

18 A. I have no corporate
19 knowledge, at this point in time, that
20 CVS disagreed with that statement.

21 Q. The next sentence states, If
22 the closed system is to function properly
23 as Congress envisioned, distributors must
24 be vigilant in deciding whether a

1 prospective customer can be trusted to
2 deliver controlled substances only for
3 lawful purposes.

4 CVS, any knowledge that they
5 disagreed with that statement in 2006?

6 MR. DELINSKY: Object to
7 form. Object on the grounds it's
8 outside the scope of the Special
9 Master Cohen's rulings on the
10 30(b)(6) topics.

11 BY MR. KENNEDY:

12 Q. Any evidence that they
13 disagreed with that, at that point in
14 time, in '06?

15 A. I have no corporate
16 knowledge as to whether or not CVS
17 disagreed with that statement in 2006.

18 Q. It next states, This
19 responsibility is critical.

20 Any information that CVS
21 Indiana disagreed with that statement in
22 2006?

23 MR. DELINSKY: Same
24 objections. Form and scope.

1 THE WITNESS: I have no
2 corporate knowledge, at this point
3 in time, as to whether or not CVS
4 agreed or disagreed with the
5 statement there.

6 BY MR. KENNEDY:

7 Q. If you go to the next page,
8 10553. The second paragraph, second
9 sentence that starts with, Moreover.

10 It states --

11 A. I'm sorry, sir, which?

12 Q. Second page -- I'm sorry,
13 second page, second paragraph starting
14 with, Moreover.

15 It states, Moreover, all
16 registrants - manufacturers,
17 distributors, pharmacies and
18 practitioners - share responsibility for
19 maintaining appropriate safeguards
20 against diversion.

21 At this point in time, in
22 '06, did CVS understand that to be the
23 position of the DEA?

24 A. Having received this letter,

1 as CVS Indiana, LLC, and having reviewed
2 the letter, CVS would have understood
3 that statement to be a statement made by
4 the DEA.

5 Q. The next sentence starts
6 with, Nonetheless.

7 Nonetheless, given the
8 extent of prescription drug abuse in the
9 United States, along with the dangerous
10 and potentially lethal consequences of
11 such abuse, even just one distributor
12 that uses its DEA registration to
13 facilitate diversion can cause enormous
14 harm.

15 CVS Indiana would have been
16 aware of that statement by the DEA,
17 correct, because they received this
18 letter, and we assume they read it, true?

19 A. As I said, CVS Indiana did
20 receive this letter and, presumably,
21 would have reviewed it and been aware of
22 that statement by the DEA.

23 Q. Any knowledge that you have
24 in your preparation, any knowledge to

1 indicate that any CVS entity disagreed
2 with that statement in 2006?

3 A. I do not have any corporate
4 knowledge that CVS disagreed with that
5 statement.

6 Q. If you go down to the
7 paragraph two down that starts with, The
8 DEA regulations require.

9 This 2006 letter goes on to
10 state, The DEA regulations require all
11 distributors to report suspicious orders
12 of controlled substances.

13 Again, CVS Indiana would
14 have been aware of that statement and
15 position of a requirement by the DEA,
16 true?

17 A. CVS -- I have no corporate
18 knowledge that CVS would not have been
19 aware of this statement in this letter
20 that CVS Indiana received.

21 Q. All right. And this one is
22 important, this -- the DEA now quotes, in
23 this letter in '06, they quote from
24 federal regulations, do they not, in the

1 very next indented paragraph? Is that a
2 quote from a federal regulation?

3 A. I understand it to be so.

4 Q. And it states, The
5 registrant shall -- now you're a lawyer.
6 What does that word "shall" mean?

7 MR. DELINSKY: Object to
8 form, to the extent that's
9 calling -- and object to scope, to
10 the extent that's calling for a
11 legal interpretation, it's outside
12 the scope of Special Master
13 Cohen's ruling.

14 BY MR. KENNEDY:

15 Q. Shall is a mandate; that's a
16 serious word, is it not, in the English
17 language and under the law? Shall means
18 you've got to do it, right?

19 MR. DELINSKY: Same
20 objections.

21 THE WITNESS: I'm not here
22 to interpret what the words of the
23 regulation mean.

24 BY MR. KENNEDY:

1 Q. You're here on behalf of the
2 CVS defendants in this case to talk about
3 what they did to monitor controlled
4 substances, correct?

5 A. I'm happy to talk about
6 that, sir.

7 Q. And wouldn't we agree that
8 they certainly would have had to read
9 this regulation and understand it, right?
10 Correct?

11 They would have to do that;
12 to put together a controlled substance
13 monitoring program, can we agree they
14 would have to have read, have to have
15 read, this regulation and understood what
16 it means, true?

17 A. I have no corporate
18 knowledge that CVS didn't read this
19 regulation.

20 Q. And when they read it and
21 saw the word "shall," they certainly
22 should have understood what that word
23 meant, right?

24 MR. DELINSKY: Object to

1 form. Object on the ground that
2 this line of questioning violates
3 Special Master Cohen's ruling on
4 September 3rd regarding the scope
5 of these topics.

6 BY MR. KENNEDY:

7 Q. Am I right?

8 THE WITNESS: Could you read
9 the question?

10 BY MR. KENNEDY:

11 Q. When CVS put together its
12 monitoring policies and they received
13 this letter from the DEA quoting the
14 regulation with respect to monitoring
15 policies and they saw that the
16 government, the federal government in its
17 regulations, had used the word "shall"
18 with respect to their responsibility to
19 establish a system, they should have
20 understood the meaning of the word
21 "shall," correct?

22 MR. DELINSKY: Object to
23 form. Object on scope grounds.
24 Object to the extent --

1 BY MR. KENNEDY:

2 Q. Isn't that true, sir?

3 MR. DELINSKY: Object to the
4 extent that this line of
5 questioning violates Special
6 Master Cohen's prior ruling on
7 these topics.

8 BY MR. KENNEDY:

9 Q. Isn't that true, they needed
10 to understand the word "shall" when
11 putting together their policies to
12 monitor the distribution of controlled
13 substances?

14 MR. DELINSKY: Same
15 objections.

16 THE WITNESS: My corporate
17 knowledge is that CVS, in putting
18 together its policies, was aware
19 of this regulation and all of the
20 words in the regulation.

21 BY MR. KENNEDY:

22 Q. Right. And they should have
23 understood that "shall" doesn't mean
24 maybe, maybe we need to do this, or we

1 don't have to do this necessarily; they
2 should have understood that "shall" means
3 you have to do it, correct? Shouldn't
4 they have understood that?

5 MR. DELINSKY: Object to
6 form.

7 BY MR. KENNEDY:

8 Q. And if you don't know,
9 that's fine. But --

10 MR. DELINSKY: Mr. Kennedy,
11 please indulge me. Object to the
12 form of the question. I --
13 Special Master Cohen specifically
14 ruled on these topics. And he
15 struck from them questions
16 regarding the interpretation of
17 any laws and limited to -- them to
18 questions about compliance with
19 the laws.

20 This line of questions is in
21 violation of Special Master's
22 rulings. And, again, if you want
23 to take a break and review the
24 ruling, I have copies here.

1 MR. KENNEDY: Let me ask
2 you, so we can -- your speaking
3 does not -- does not count on my
4 tape time; is that correct?

5 MR. DELINSKY: No, it
6 counts.

7 MR. KENNEDY: Then we've got
8 to do something. Because you're
9 taking up three-quarters of my
10 tape time.

11 MR. DELINSKY: You're asking
12 questions that violate Special
13 Master's ruling.

14 MR. KENNEDY: And you have
15 the right to object or instruct
16 not to answer, but not to talk for
17 three minutes every question. And
18 you should just do one of the two.

19 And I will give you a
20 continuing objection on form and
21 scope of the notice for every
22 question going forward so we don't
23 have to take the time to do that.
24 I'm willing to do that.

1 MR. DELINSKY: I think the
2 record will speak for itself on
3 the length and propriety of my
4 objections.

5 BY MR. KENNEDY:

6 Q. Let me ask you this: Let's
7 go on and read further and see what the
8 DEA was telling the CVS defendant from
9 Indiana here.

10 It next states, The
11 registrant shall -- shall inform the
12 field division of the Administration in
13 his area of suspicious orders when
14 discovered by the registrant -- and that
15 would be CVS Indiana, correct?

16 A. Yes.

17 Q. Suspicious orders -- this is
18 coming from the regulation, Suspicious
19 orders include orders of unusual size,
20 orders deviating substantially from a
21 normal pattern and orders of unusual
22 frequency.

23 CVS Indiana would have been
24 aware of that statement had they received

1 and read this letter, correct?

2 A. I believe that's correct.

3 Q. Is there any indication from
4 your study, from your four weeks of study
5 of this case, that CVS, or any of the CVS
6 entities, that being the other defendant
7 or CVS Pharmacy, Inc., disagreed with
8 that statement?

9 MR. DELINSKY: Object to
10 form.

11 THE WITNESS: I have no
12 corporate knowledge that CVS
13 disagreed with that statement.

14 BY MR. KENNEDY:

15 Q. The next statement by the
16 DEA in this letter starts with, It bears
17 emphasis.

18 The DEA next states, in
19 2006, It bears emphasis that the
20 foregoing reporting requirement is in
21 addition to, and not in lieu of, the
22 general requirement under 21 U.S.C. 823
23 (e) that a distributor maintain effective
24 controls against diversion.

1 CVS Indiana would have been
2 aware of that statement by the DEA,
3 correct?

4 A. I have no corporate
5 knowledge that CVS was not aware of that
6 statement.

7 Q. And you have no corporate
8 knowledge that they disagreed with that
9 statement, true?

10 A. I also have no corporate
11 knowledge that CVS has agreed with that
12 statement.

13 Q. The DEA next states, in
14 2006, Thus -- Thus, in addition to
15 reporting all suspicious orders, a
16 distributor has a statutory
17 responsibility to exercise due diligence
18 to avoid filling suspicious orders that
19 might be diverted into other than
20 legitimate medical, scientific and
21 industrial channels. Failure to exercise
22 such due diligence could, as
23 circumstances warrant, provide a
24 statutory basis for revocation or

1 suspension of a distributor's
2 registration.

3 Do you have any corporate
4 knowledge that would indicate that CVS,
5 any of the CVS entities, CVS Pharmacy,
6 Inc. or the two defendants, would
7 disagree with that statement by the DEA
8 in 2006?

9 MR. DELINSKY: Object to
10 form.

11 THE WITNESS: I do not have
12 any corporate knowledge that any
13 CVS entity would have disagreed
14 with that statement in 2006.

15 - - -

16 (Whereupon, CVS-Vernazza
17 Exhibit-46,
18 CVS-MDLT1-000091508-518, was
19 marked for identification.)

20 - - -

21 BY MR. KENNEDY:

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18 Q. The date of this e-mail is
19 important.

20 The date of this e-mail is
21 2/21/08, correct?

22 A. The e-mail reflects a date
23 of 2/21/08, I agree with that.

24 Q. And there's an attachment of

1 DEA letter, September 27, '06, and the
2 attachment of an additional DEA letter
3 from '07, true?

4 A. As I mentioned, I haven't
5 had a chance to review this document now.
6 I'll take a look at it.

7 Q. I'm just reading the
8 attachments. Under subject, I'm reading
9 the purported attachments, right?

10 A. Well, it looks like there
11 maybe are three attachments. I think you
12 referenced two.

13 Q. Let's go -- go to Page
14 91513.

15 We have already looked at
16 the 2006 letter from the DEA that was
17 received by Indiana -- CVS Indiana,
18 correct? We talked about --

19 A. We have. I haven't had a
20 chance to review this document to
21 determine whether or not that letter is
22 also attached to this.

23 Q. I'm not asking you any
24 question about that.

1 You and I have already
2 reviewed the 2006 DEA letter to CVS
3 Indiana, correct?

4 A. We have reviewed a September
5 27th, 2006 letter addressed to --

6 Q. So my answer is yes?

7 A. -- CVS Indiana, LLC.

8 Q. So my answer is yes,
9 correct?

10 MR. DELINSKY: Object to
11 form.

12 BY MR. KENNEDY:

13 Q. My answer is yes, right?

14 A. I answered -- yes --

15 Q. Yes.

16 A. -- we reviewed a letter
17 dated September 27th, 2006 to Indiana,
18 LLC.

19 Q. That was my question, right?

20 A. I don't think that was
21 exactly your question.

22 Q. Well, I want you to answer
23 my exact questions.

24 You and I have already

1 reviewed the 2006 correspondence from the
2 DEA to Indiana, LLC, correct?

3 A. We've reviewed one letter.

4 Q. Correct.

5 A. You said 2006
6 correspondence. I just want to be a
7 little bit more precise, to make sure
8 we're talking about the same thing.

9 Q. DEA sent out a second
10 letter, in 2007, to all distributors, did
11 they not?

12 Sir? Sir, I'm not asking
13 you anything about the exhibit.

14 Did the DEA send out a
15 second letter to all distributors in 2007
16 again talking about suspicious order
17 monitoring?

18 MR. DELINSKY: Mr. Vernazza,
19 you may read the document if you
20 feel you need to, to answer the
21 question.

22 THE WITNESS: The letter
23 here in the exhibit that you've
24 put in front of me does not have

1 an addressee.

2 BY MR. KENNEDY:

3 Q. I'm not asking you about the
4 exhibit yet. I'm just asking you a
5 question.

6 Did -- do you have
7 knowledge, on behalf of the CVS
8 defendants, that the DEA indeed sent out
9 a second letter in 2007 to all
10 distributors again outlining their duties
11 and responsibilities under the
12 regulations and the Controlled Substances
13 Act? Are you aware of that?

14 A. And, sir, I was attempting
15 to answer your question before you cut
16 me --

17 Q. Are you aware --

18 A. -- off. If you could let me
19 answer the question, I'll let you know.

20 Q. Are you aware of that, that
21 the DEA sent out a letter to all
22 distributors in '07, similar to the
23 letter they sent out in '06? Are you
24 aware of that?

1 A. I have seen statements to
2 that effect.

3 Q. Okay.

4 A. We have not been able to
5 locate a copy of the 2007 letter.

6 Q. Sir, just answer my
7 questions. I'm going to get to that.

8 You are aware that they did
9 that, correct?

10 MR. DELINSKY: Object to
11 form.

12 THE WITNESS: No, I'm not
13 aware that they did that, because
14 I have been unable to find a copy
15 of that letter in our -- in our
16 files to validate that CVS
17 Indiana, LLC, received a copy of
18 the 2007 letter.

19 BY MR. KENNEDY:

20 Q. And I'm not asking you that,
21 all right?

22 A. Well, CVS Indiana, LLC --

23 Q. Right.

24 A. -- was a DEA registrant --

1 Q. Right.

2 A. -- in 2007.

3 Q. Correct.

4 A. I have not located a copy of
5 that letter in our files as sent to CVS
6 Indiana, LLC, based on my investigation
7 to date. Therefore, I am unable to say,
8 to the best of my corporate knowledge,
9 with certainty, that CVS Indiana, LLC,
10 received the 2007 letter.

11 You asked me whether or not
12 DEA sent that letter to all registrants.
13 I do not have corporate knowledge as to
14 whether or not Indiana, LLC, received
15 that letter at this point in time.

16 Q. All right. If the DEA did
17 what they said they did, sent it out to
18 all registrants, then CVS Indiana, LLC
19 should have received a copy of the
20 February of '07 letter, correct?

21 MR. DELINSKY: Object to
22 form.

23 BY MR. KENNEDY:

24 Q. If the DEA did what they

1 said they did, true?

2 MR. DELINSKY: Object to
3 form.

4 THE WITNESS: Are you
5 referring to a particular
6 statement by the DEA when you say
7 they said --

8 BY MR. KENNEDY:

9 Q. You can assume that the DEA
10 has stated that they sent a letter, dated
11 February 7th, 2007, to all registrants,
12 all distributors. Assume that to be
13 true.

14 If they did indeed do what
15 they say they did, then CVS Indiana
16 should have received a copy of the
17 February 7th letter, true?

18 MR. DELINSKY: Object to
19 form.

20 THE WITNESS: CVS Indiana
21 was a DEA registrant in 2007. If
22 every DEA registrant received a
23 copy of the letter, CVS Indiana,
24 as a registrant, would presumably

1 have received a copy of that
2 letter.

3 We have been unable to
4 locate the 2007 letter in our
5 files.

6 BY MR. KENNEDY:

7 Q. And that certainly does not
8 mean you didn't receive it, correct, just
9 because you couldn't find it, true?

10 A. It does not necessarily mean
11 we didn't receive it. I agree with that.

12 Q. Look at Page 91513, if you
13 would. Exhibit-46.

14 This is the February 7th,
15 2007 letter from the DEA, true? True?

16 A. This is a letter dated
17 February 7th, 2007. It appears to be
18 redacted in some form, and I have not
19 reviewed this particular copy, which also
20 bears, maybe, some annotations.

21 Q. Sir, I asked you, is this
22 the February 7, 2007 letter from the DEA?
23 Is that what it appears to be? Simple
24 question.

1 A. It appears to be a letter on
2 DEA letterhead, dated February 7, 2007.
3 Signed by Mr. Rannazzisi.

4 Q. And was this letter sent to
5 CVS on 2/21/08 by Mr. Buzzeo?

6 A. Again, assuming that Amy
7 Lynn Brown is an employee of CVS, the
8 answer to that would appear to be yes.

9 Q. Look at the Bates stamp down
10 at the bottom.

11 Does that say CVS?

12 A. It does.

13 Q. Do you understand this was
14 provided to us from the CVS files?

15 A. I presume that to be the
16 case.

17 Q. All right. So CVS received
18 this; we can agree with that, right?

19 A. To the best of my corporate
20 knowledge at this point in time, yes.

21 Q. This letter, again, 91513,
22 it starts off with, This letter is being
23 sent to every commercial entity in the
24 United States registered with the Drug

1 Enforcement Administration (DEA) to
2 distribute controlled substances.

3 That's a statement by the
4 DEA that this was sent to all of the
5 registrants, which should have included
6 CVS Indiana, true? True?

7 A. CVS was -- Indiana was a
8 commercial entity in the United States
9 registered with the DEA to distribute
10 controlled substances.

11 Q. Is my answer yes? Is the
12 answer to my question is yes?

13 MR. DELINSKY: Object to
14 form.

15 BY MR. KENNEDY:

16 Q. You don't have to repeat --
17 again, we have limited time. You don't
18 have to repeat my question in your
19 answer.

20 Is the answer to that
21 question yes?

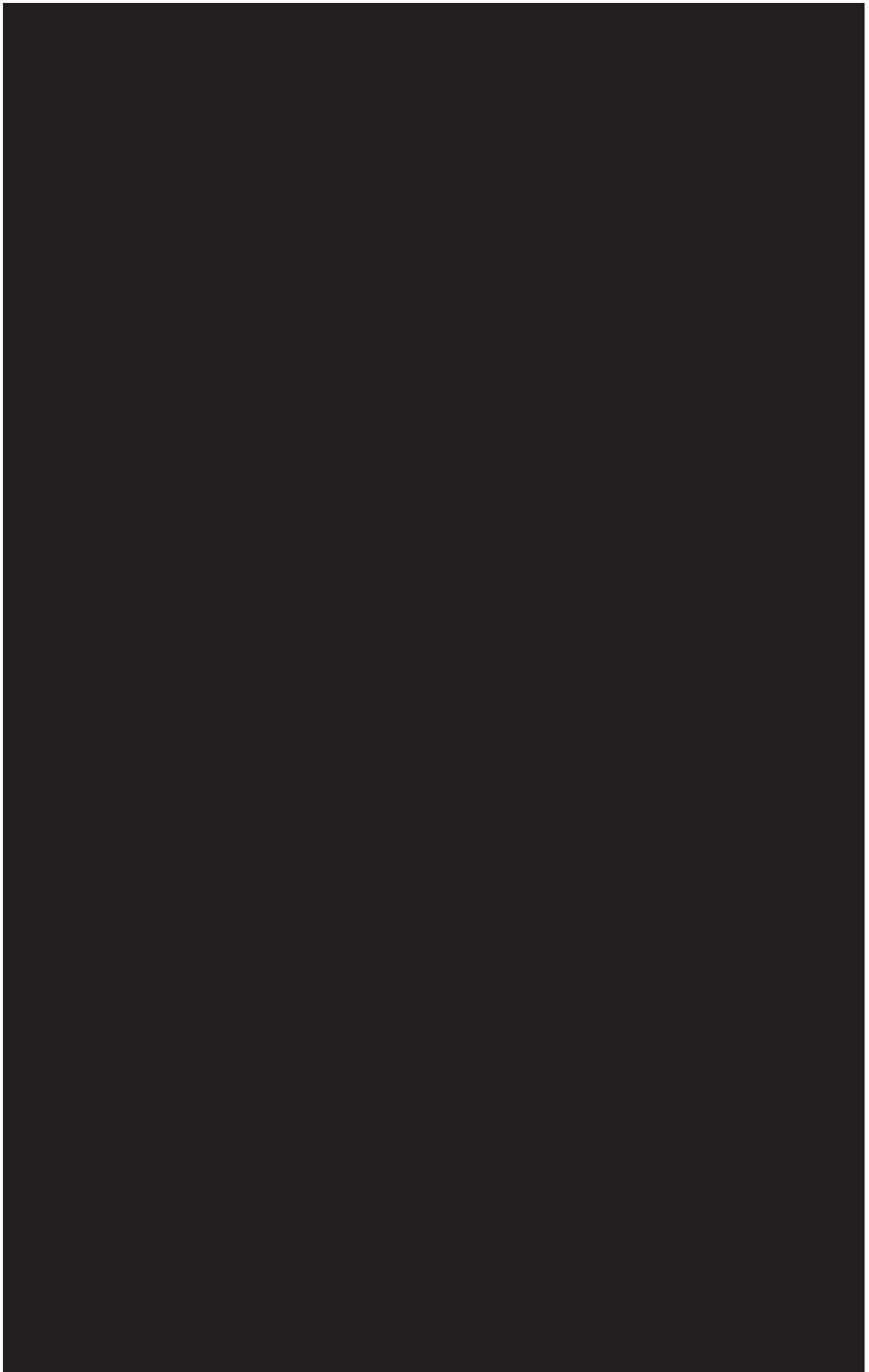
22 A. I didn't repeat your
23 question in my answer. I gave an answer.

24 The answer is that CVS

1 Indiana was registered with the DEA to
2 distribute controlled substances at the
3 time that this letter is dated. There is
4 a statement in this letter that it's
5 being sent to every such registrant.

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Q. At the very least, we've got
a CVS Bates number on this so this came
from CVS files, true? Despite who Amy
Lynn is, this came from CVS files, true?

A. CVS files, yes. But not
necessarily only CVS Pharmacy, Inc.
files.

My understanding from --

Q. If you want to take a look
at Exhibit-4, please.

A. -- taking a look at
documents that have been --

Q. Take a look at Exhibit-4,
please.

A. -- produced in this case
that have been taken from the files of
both CVS Indiana, CVS RX Services, Inc.
and CVS Pharmacy, Inc.

- - -

(Whereupon, CVS-Vernazza
Exhibit-4,
CVS-MDLT1-000013534-536, was

1 marked for identification.)

2 - - -

3 BY MR. KENNEDY:

4 Q. I'll show you Exhibit-4, if
5 I could.

6 Do you have Exhibit-4?

7 A. Yes, sir.

8 Q. Exhibit-4 is an e-mail, is
9 it not, from Craig Schiavo; is that
10 correct?

11 A. I just need a minute to
12 review the document.

13 Q. I'm just asking you whether
14 it's an e-mail from Craig Schiavo.

15 Do you see up at the top
16 where it says, From?

17 A. I need to review the
18 document in order to answer that
19 question, sir.

20 Yes, sir, this does appear
21 to be an e-mail from Mr. Schiavo.

22 Q. And attached -- and Mr.
23 Schiavo, where does he work?

24 A. He works for, I believe, CVS

1 Pharmacy, Inc. in Rhode Island.

2 Q. And he's attaching a
3 December 27, 2007 letter from the DEA.
4 And I think this is the third letter that
5 the DEA sent to all distributors.

6 Am I right? Do you see the
7 attachment, which would be 13535?

8 A. I do see that attachment,
9 yes.

10 Q. Look at the first sentence
11 where it says, Dear Registrant.

12 It states, Dear Registrant,
13 This letter is being sent to every entity
14 in the United States registered with the
15 Drug Enforcement Administration (DEA) to
16 manufacture or distribute controlled
17 substances.

18 At that point in time, CVS
19 Indiana, LLC was registered to distribute
20 controlled substances, true?

21 A. I believe that is true.

22 Q. Have you reviewed this
23 letter before?

24 A. Perhaps some components of

1 it.

2 Q. I'm not going to go through
3 all of this, but this was also attached
4 to 46, Exhibit-46, was the 2008 e-mail to
5 you -- or not to you, but to CVS,
6 correct?

7 So you would have received
8 this -- if the DEA is accurate in their
9 statement, CVS Indiana would have
10 received this in December of '07 and it
11 was also attached to the 2008 e-mail that
12 was sent to Amy Lynn in 2008?

13 A. I'm sorry, could you repeat
14 the question?

15 Q. If the first sentence is
16 true, that this was sent to all
17 registrants to distribute controlled
18 substances, then this letter would have
19 been received by CVS Indiana in 2007,
20 true?

21 A. Given that CVS Indiana was a
22 registrant, if the statement in the first
23 sentence is accurate, then, presumably,
24 CVS Indiana would have received the

1 letter.

2 Q. And, again, have you
3 reviewed this letter?

4 A. My testimony was that I have
5 reviewed, perhaps, certain components of
6 this letter.

7 Q. Let's look at the second
8 paragraph. It starts with, In addition.

9 It states, In addition to,
10 and not in lieu of, the general
11 requirement under 21 U.S.C. 823, that
12 manufacturers and distributors maintain
13 effective controls against diversion, DEA
14 regulations require all manufacturers and
15 distributors to report suspicious orders
16 of controlled substances.

17 From your knowledge of this
18 case, at this point in time, did any CVS
19 entity disagree with that position of the
20 DEA?

21 MR. DELINSKY: Object to
22 form. Object to scope. Object to
23 the extent it calls for a legal
24 interpretation in violation of

1 Special Master Cohen's ruling.

2 THE WITNESS: At this point
3 in time, I do not have corporate
4 knowledge that any CVS entity
5 disagreed with that statement.

6 BY MR. KENNEDY:

7 Q. It next states, Title 21 CFR
8 1301.74(b) specifically requires that a
9 registrant design and operate a system to
10 disclose to the registrant suspicious
11 orders of controlled substances.

12 CVS would have been aware of
13 that statement had they received this
14 letter in '07, true?

15 A. To the best of my corporate
16 knowledge at this point in time, had CVS
17 Indiana received this letter at that
18 point in time, presumably, it would have
19 been reviewed and CVS Indiana would have
20 been aware of the statement.

21 Q. And next it states, The
22 regulation clearly indicates that it is
23 the sole -- sole responsibility of the
24 registrant to design and operate such a

1 system.

2 Do you see that?

3 A. I do see that.

4 Q. Let me ask you this: The
5 registrant is the CVS Indiana, correct?

6 A. The -- yes, the registrant
7 would be CVS Indiana with respect to the
8 distribution activities at the CVS
9 Indiana distribution center.

10 Q. All right. Now, as we go
11 forward today and talk about the design
12 and operation of a system to disclose,
13 can we agree that the design and the
14 operation of the system to disclose
15 suspicious orders was designed and
16 operated by CVS Pharmacy, Inc. and not
17 the registrant, as required?

18 MR. DELINSKY: Object to
19 form.

20 THE WITNESS: Not at all
21 times, no.

22 BY MR. KENNEDY:

23 Q. Well, I'm going to ask you
24 about that.

1 As we move through today,
2 I'm going to ask you who did what, where
3 and when, as to whether or not it is the
4 distribution center, the registrant being
5 identified in this DEA letter, or whether
6 or not it is CVS Pharmacy, Inc., all
7 right?

8 We're going to be very clear
9 about that as we proceed, is that
10 agreeable, that we can be clear about
11 that?

12 MR. DELINSKY: Object to
13 form.

14 BY MR. KENNEDY:

15 Q. Agreeable?

16 A. I'll respond to your
17 questions the best I can, based on the
18 question that's asked.

19 Q. Let's move on.

20 Generally, pharmacies have
21 certain responsibilities with respect to
22 filling prescriptions, certain
23 requirements with respect to attempting
24 to prevent diversion? Pharmacies have

1 those certain responsibilities; agreed?

2 A. There are certain
3 responsibilities, under the Controlled
4 Substances Act, that are incumbent upon
5 pharmacies and pharmacists with respect
6 to the filling of controlled substances.
7 Certainly, one of those is the pharmacy's
8 duty to perform corresponding
9 responsibility, or obligation under the
10 law to perform corresponding
11 responsibility, due diligence, before
12 dispensing a prescription. That's
13 certainly consistent with the prevention
14 of diversion.

15 Q. And can we agree that just
16 because pharmacies have certain
17 responsibilities under the law, that does
18 not in any way abdicate or negate the
19 responsibilities of a distributor with
20 respect to suspicious order monitoring?
21 Can we agree with that?

22 MR. DELINSKY: Object to
23 form. Object on scope grounds,
24 including in light of Special

1 Master Cohen's ruling on the
2 interpretation of Controlled
3 Substances Act and its
4 regulations.

5 THE WITNESS: Could you
6 repeat the question?

7 BY MR. KENNEDY:

8 Q. Can we agree that just
9 because the pharmacies have certain
10 responsibilities that you just described,
11 can we agree that just because those
12 responsibilities exist on the part of a
13 pharmacy, those do not in any way
14 diminish or negate the responsibilities
15 of the distributor with respect to
16 monitoring suspicious orders?

17 MR. DELINSKY: Same
18 objections.

19 THE WITNESS: The
20 regulations in the Controlled
21 Substances Act provide for
22 different obligations on behalf of
23 pharmacies and distributors.

24 CVS undertakes to comply

1 with both sets of obligations.

2 BY MR. KENNEDY:

3 Q. And one does not affect the
4 other, correct?

5 MR. DELINSKY: Object to
6 form. Object on scope grounds.
7 Object on the grounds of Special
8 Master Cohen's ruling.

9 THE WITNESS: No, I don't
10 know that I would agree with that.
11 A pharmacy places orders for
12 controlled substances that are
13 shipped. There can be any number
14 of processes, procedures,
15 safeguards in place at the
16 pharmacy that would result in the
17 pharmacy not placing orders that
18 would be identified by a
19 distributor as suspicious.

20 BY MR. KENNEDY:

21 Q. Let me ask you this -- I'm
22 going to ask you again.

23 Is it the position of the
24 CVS defendants that because they had

1 pharmacy policies in place that their
2 responsibility to monitor suspicious
3 orders was less?

4 A. No, that's not the question
5 you asked me.

6 MR. DELINSKY: Excuse me.

7 BY MR. KENNEDY:

8 Q. That's the question I'm just
9 asking. And if you'll answer the
10 question I just asked, please.

11 MR. DELINSKY: Object to
12 form.

13 BY MR. KENNEDY:

14 Q. Do you want her to read the
15 question back?

16 A. Sure. I think they are two
17 different questions.

18 Q. I want you just to answer
19 the one I just asked.

20 A. Okay. Well, it's a new
21 question, so I'll respond to it.

22 Q. We'll just do one at a time.
23 If you would please just answer the most
24 recent question, that would make things

1 easier.

2 A. That would be great, if she
3 can read it back.

4 MR. KENNEDY: Would you read
5 it back, please?

6 - - -

7 (Whereupon, the court
8 reporter read the following part
9 of the record:

10 "Question: Let me ask you
11 this -- I'm going to ask you
12 again.

13 "Is it the position of the
14 CVS defendants that because they
15 had pharmacy policies in place
16 that their responsibility to
17 monitor suspicious orders was
18 less?")

19 - - -

20 THE WITNESS: There was no
21 less an obligation to monitor
22 suspicious orders.

23 The question that you had
24 asked before was whether or not

1 there could be -- whether it was
2 relevant.

3 BY MR. KENNEDY:

4 Q. I just want that question.

5 So your answer is fine.

6 The responsibility is not
7 less, correct?

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Q. The Know Your Customer

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obligation that you just talked about,

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that had been expressed by the DEA going

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back to 2007 and 2008, correct?

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MR. DELINSKY: Object to

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form.

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THE WITNESS: I would have

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to review a document to confirm

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that. But it sounds consistent

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with my understanding.

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BY MR. KENNEDY:

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Q. And would you agree that the

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responsibility that a distributor has

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under the Controlled Substances Act and

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the regulatory requirements cannot be

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abdicated or transferred to anyone else?

21

Do you agree with that?

22

A. There were certain services

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that could be performed on behalf of the

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registrant and that were performed on

1 behalf of the registrant, for the
2 registrant; so, for instance, to the
3 extent that corporate logistics personnel
4 are involved in operating a suspicious
5 order monitoring system for the
6 registrant.

7 Q. Do you agree with that
8 statement, the responsibilities that a
9 distributor, a CVS distributor, has under
10 the regulatory requirements cannot be
11 abdicated or transferred to anyone else?
12 Do you agree with that, sir; yes or no?

13 MR. DELINSKY: Object to the
14 form of the question. Object on
15 the grounds that this question,
16 again, is outside the scope of the
17 deposition notice as ruled upon by
18 Special Master.

19 BY MR. KENNEDY:

20 Q. Do you agree with that, sir?

21 A. I think the regulation
22 speaks for itself.

23 MR. KENNEDY: Exhibit-65.

24 - - -

1 (Whereupon, CVS-Vernazza
2 Exhibit-65,
3 CVS-MDLT1-000019722-786, was
4 marked for identification.)

5 - - -

6 BY MR. KENNEDY:

7 Q. Sir, you took four weeks to
8 prepare for this today, did you not?

9 A. I did.

10 Q. You talked to 40 different
11 people actually involved with this
12 program?

13 A. I think it's more than 40.

14 Q. Four weeks of time, several
15 hundred hours?

16 A. That's fair.

17 Q. Reviewed documents?

18 A. I have.

19 MR. DELINSKY: Let's take a
20 break, before we get to the
21 exhibit. I don't want you to show
22 us the exhibit. Let's take a
23 break.

24 MR. KENNEDY: What's that?

1 MR. DELINSKY: Let's take a
2 break. It's been about 55
3 minutes.

4 MR. KENNEDY: I'm in the
5 middle of showing him an exhibit.

6 MR. DELINSKY: I don't want
7 to see -- right. That's why --
8 the exhibit has yet to be shown to
9 him, and that's why I propose we
10 take the break now.

11 VIDEO TECHNICIAN: The time
12 is 11:41 a.m. We are going off
13 the record.

14 - - -

15 (Whereupon, a brief recess
16 was taken.)

17 - - -

18 VIDEO TECHNICIAN: The time
19 is 11:59 a.m. And we're back on
20 the record.

21 BY MR. KENNEDY:

22 Q. Sir, we're showing you
23 Exhibit-65.

24 Have you seen this before?

1 A. Allow me to just take a
2 minute to review.

3 Q. Sir, if you look at the top
4 of the first page --

5 A. I apologize. I'm still
6 looking through the document.

7 Q. You don't know whether
8 you've seen this before?

9 A. I reviewed a great number of
10 documents in preparation for this
11 deposition. I'm attempting to review the
12 document in order to answer that
13 question.

14 Q. Maybe if you just -- if you
15 look at the title on the first page, that
16 would help you out.

17 A. Yes, I did.

18 Q. We can look at the title,
19 then, all the way at the top, this is the
20 CVS distribution center -- distribution
21 center controlled drug-DEA standard
22 operating procedures manual, true?

23 A. I'm sorry, I just want to
24 clarify my prior answer.

1 To the extent that your
2 question was whether or not I reviewed
3 this, I did look at the front page when
4 you asked me to look at the front page.

5 I have not yet been able to
6 determine whether or not I reviewed this
7 document in preparation for the
8 deposition.

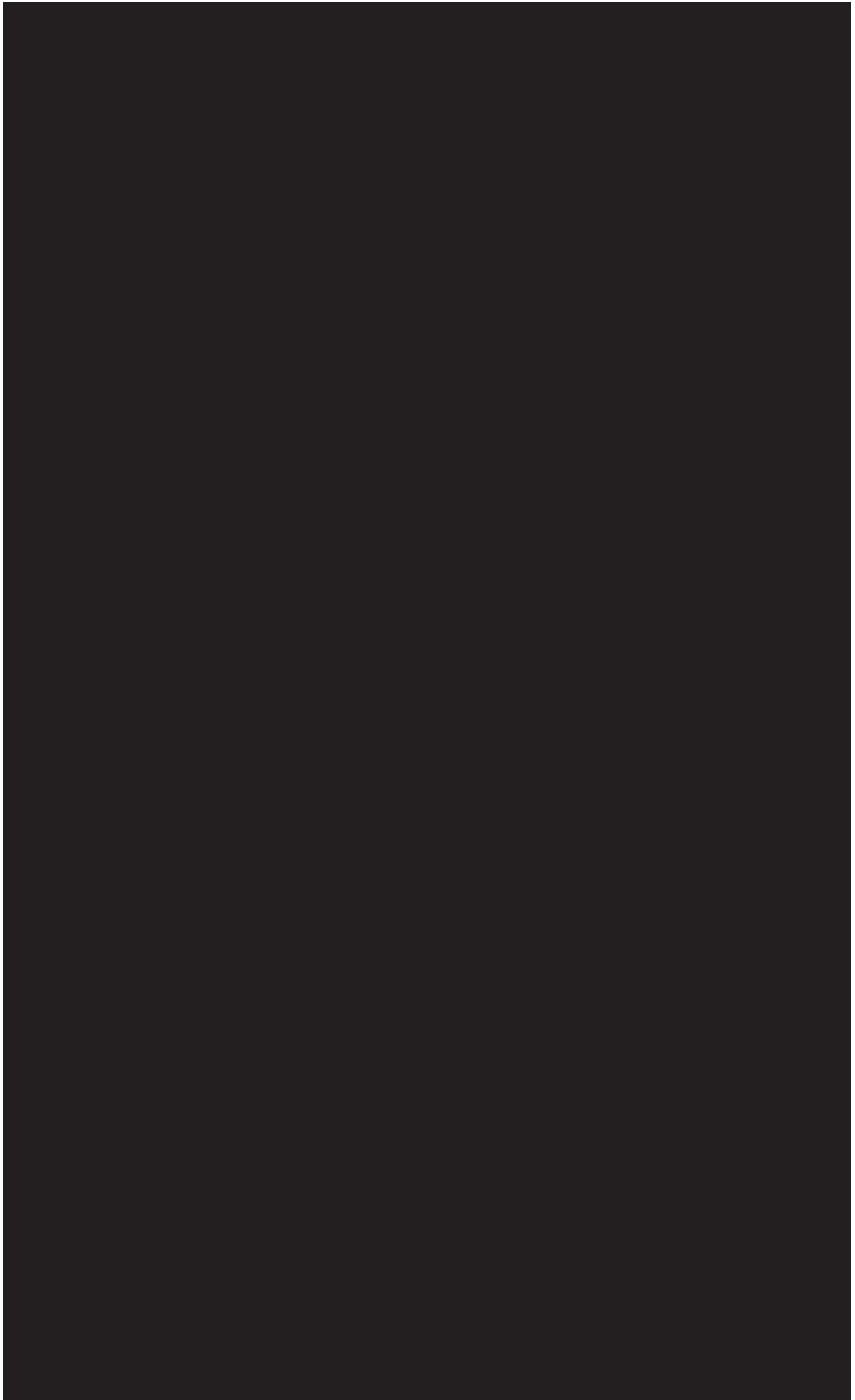
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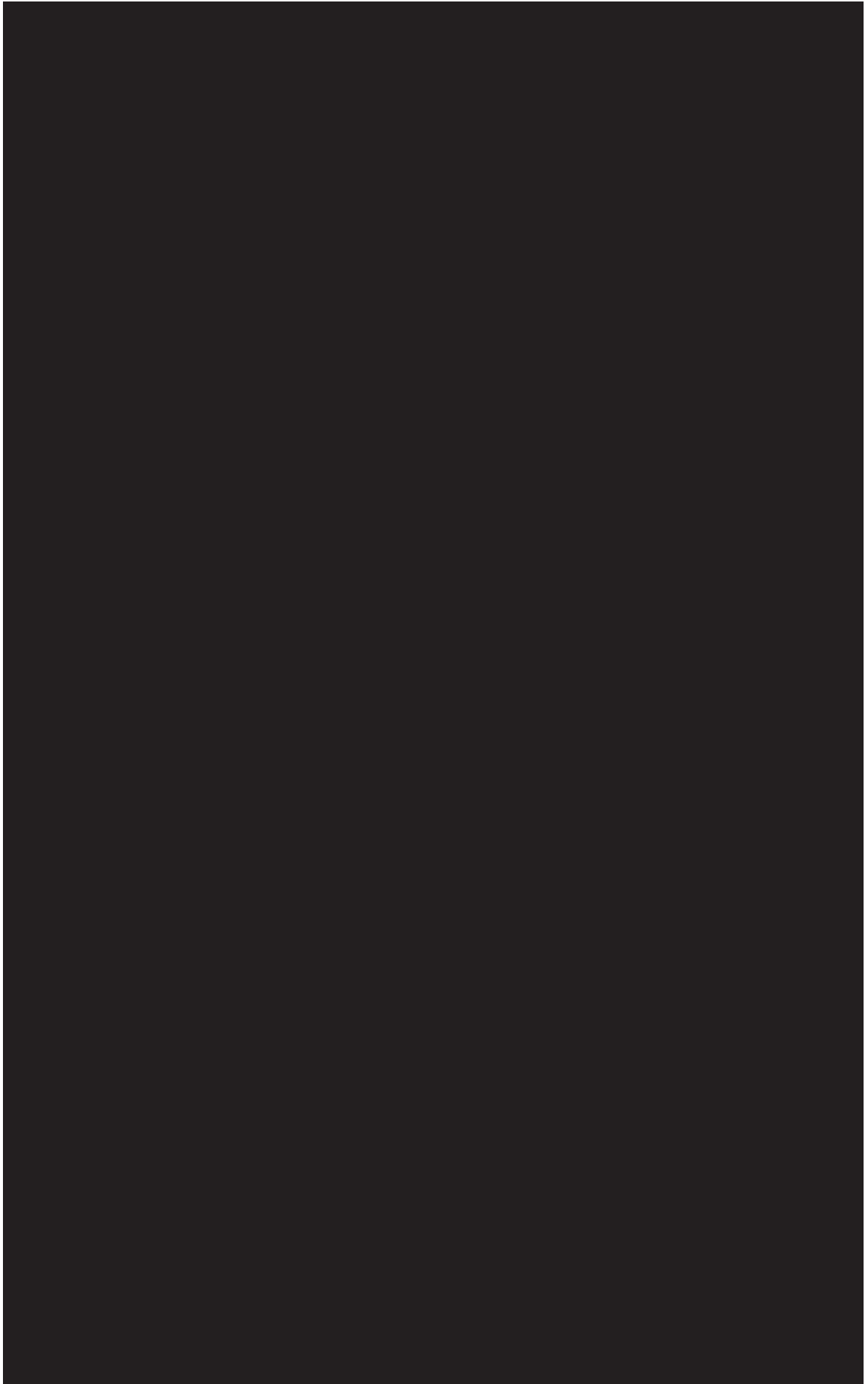
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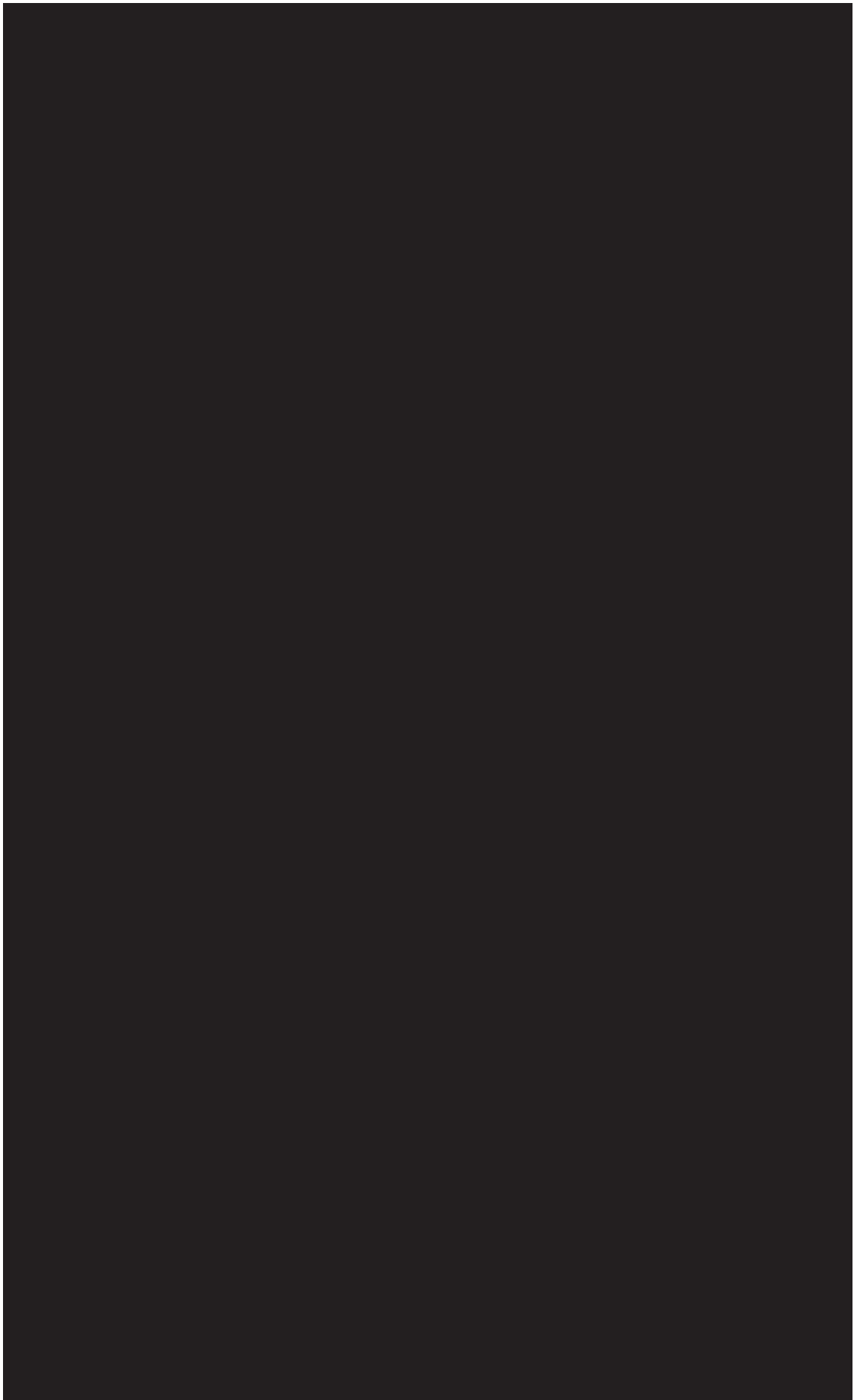
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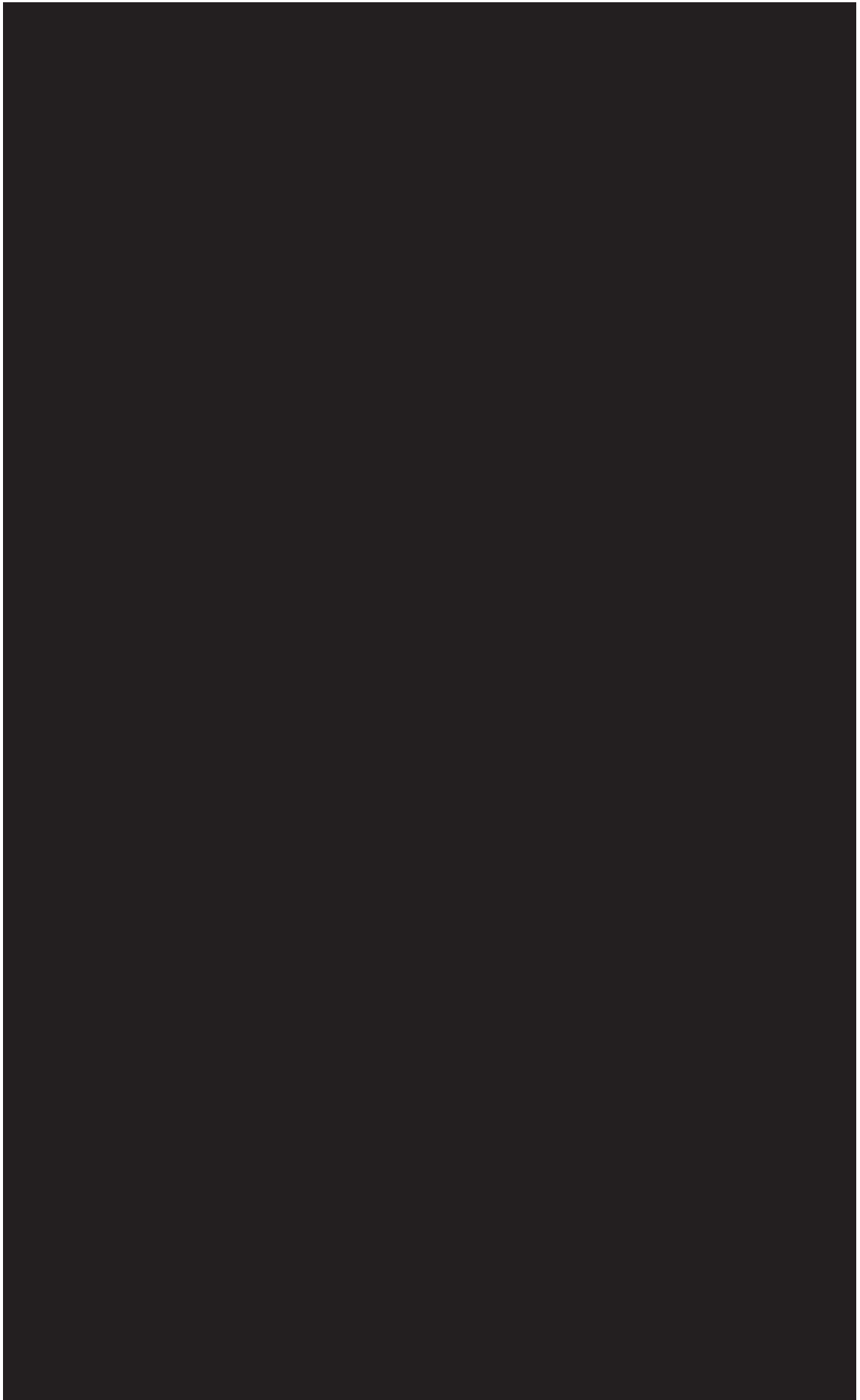
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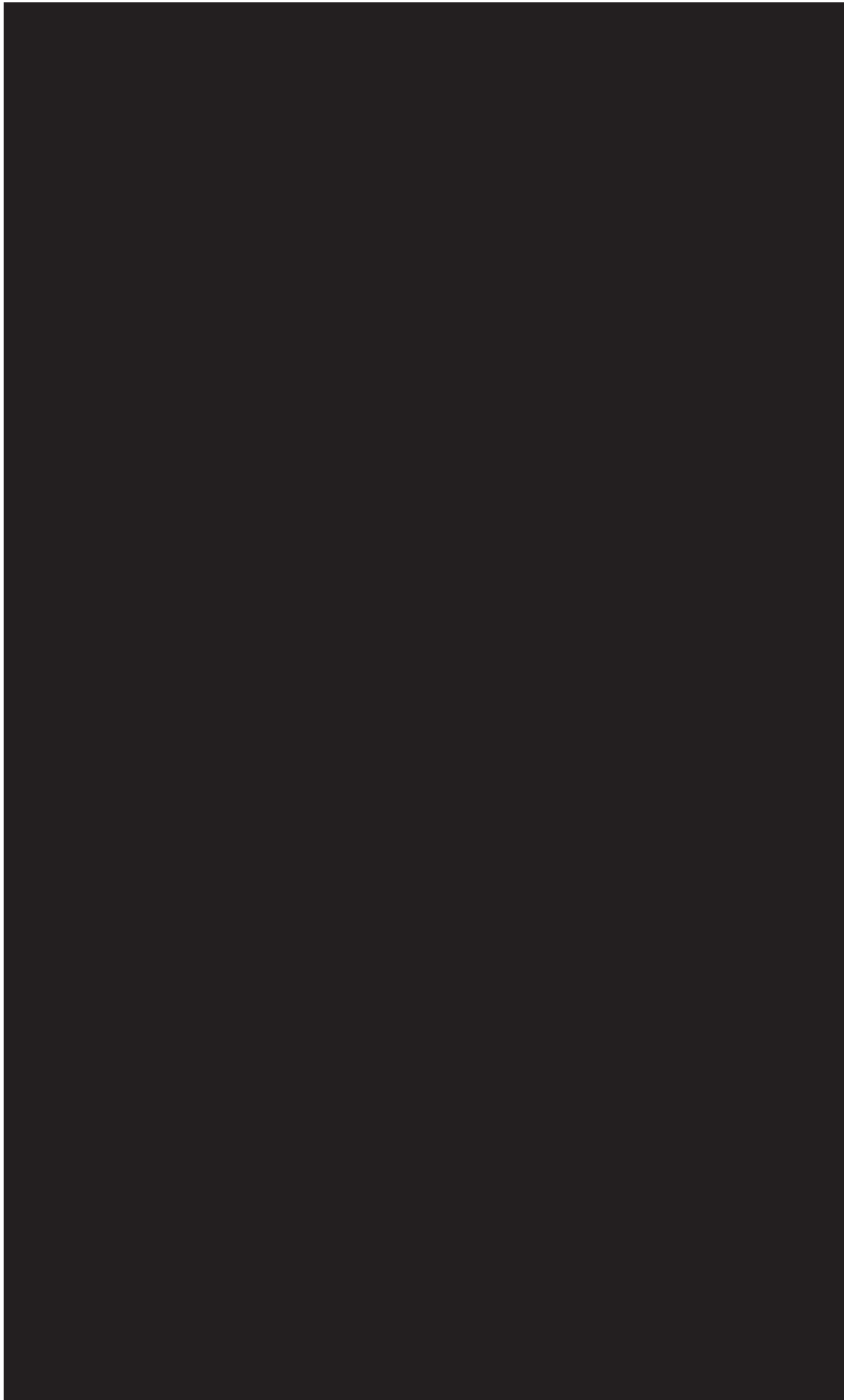
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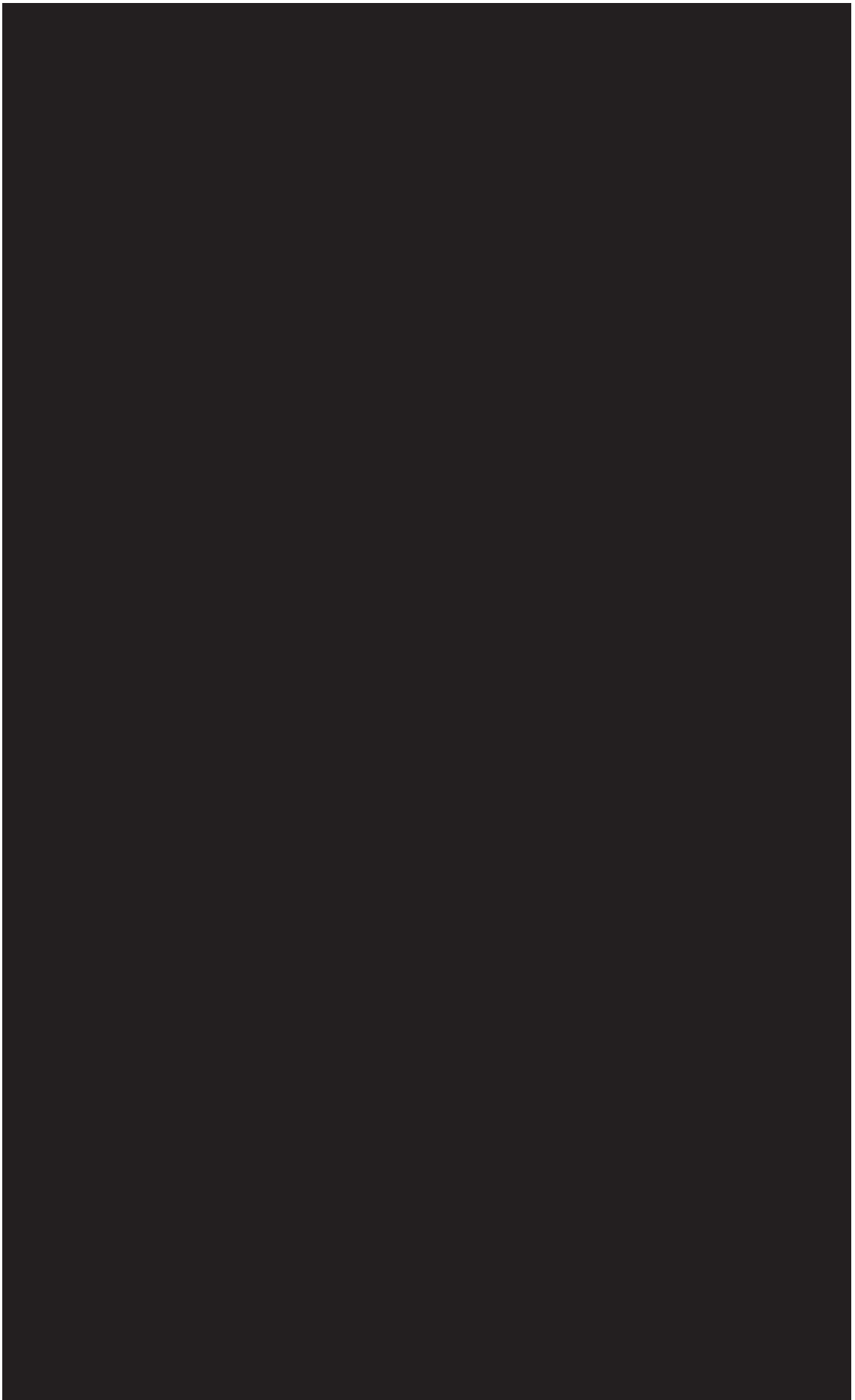
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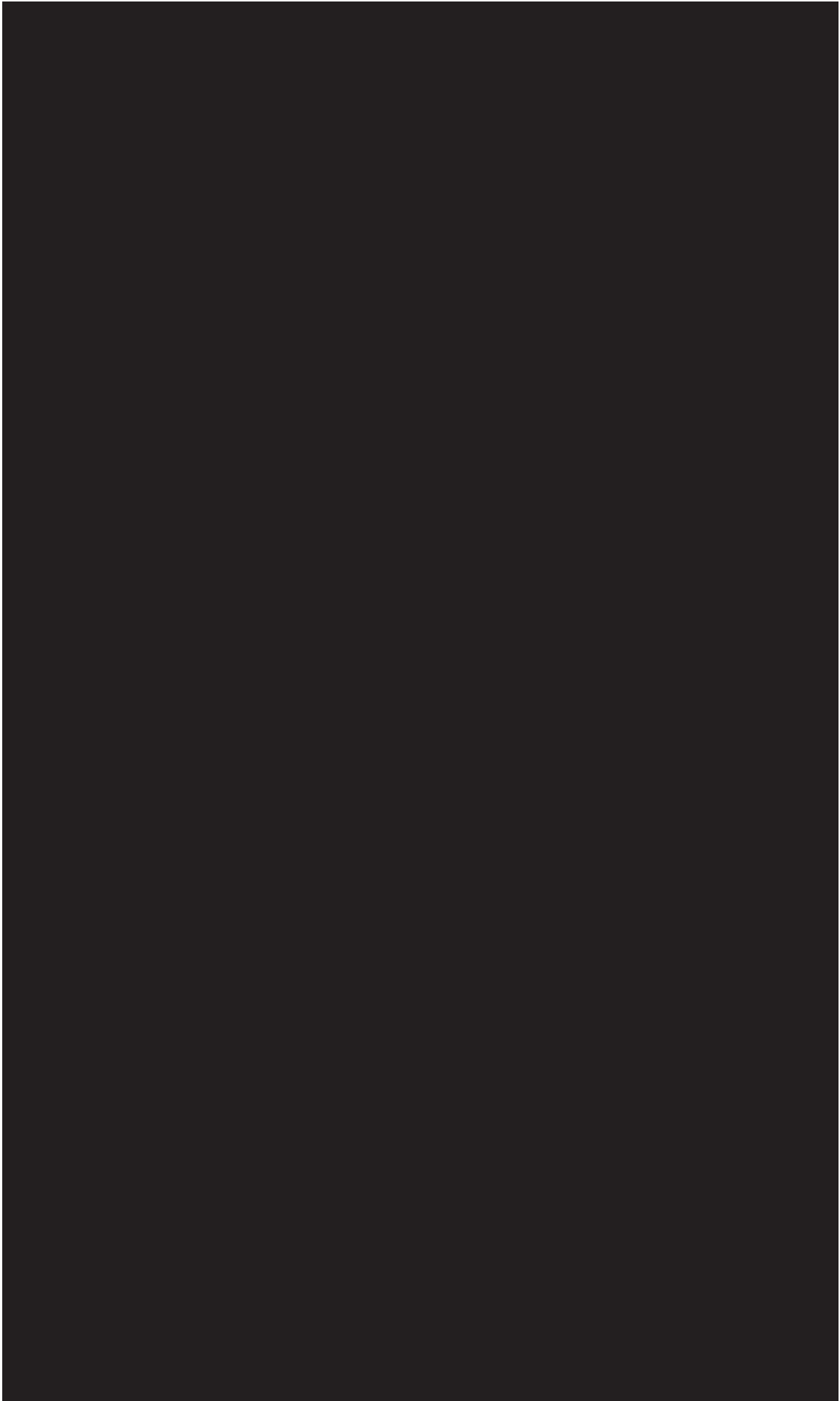
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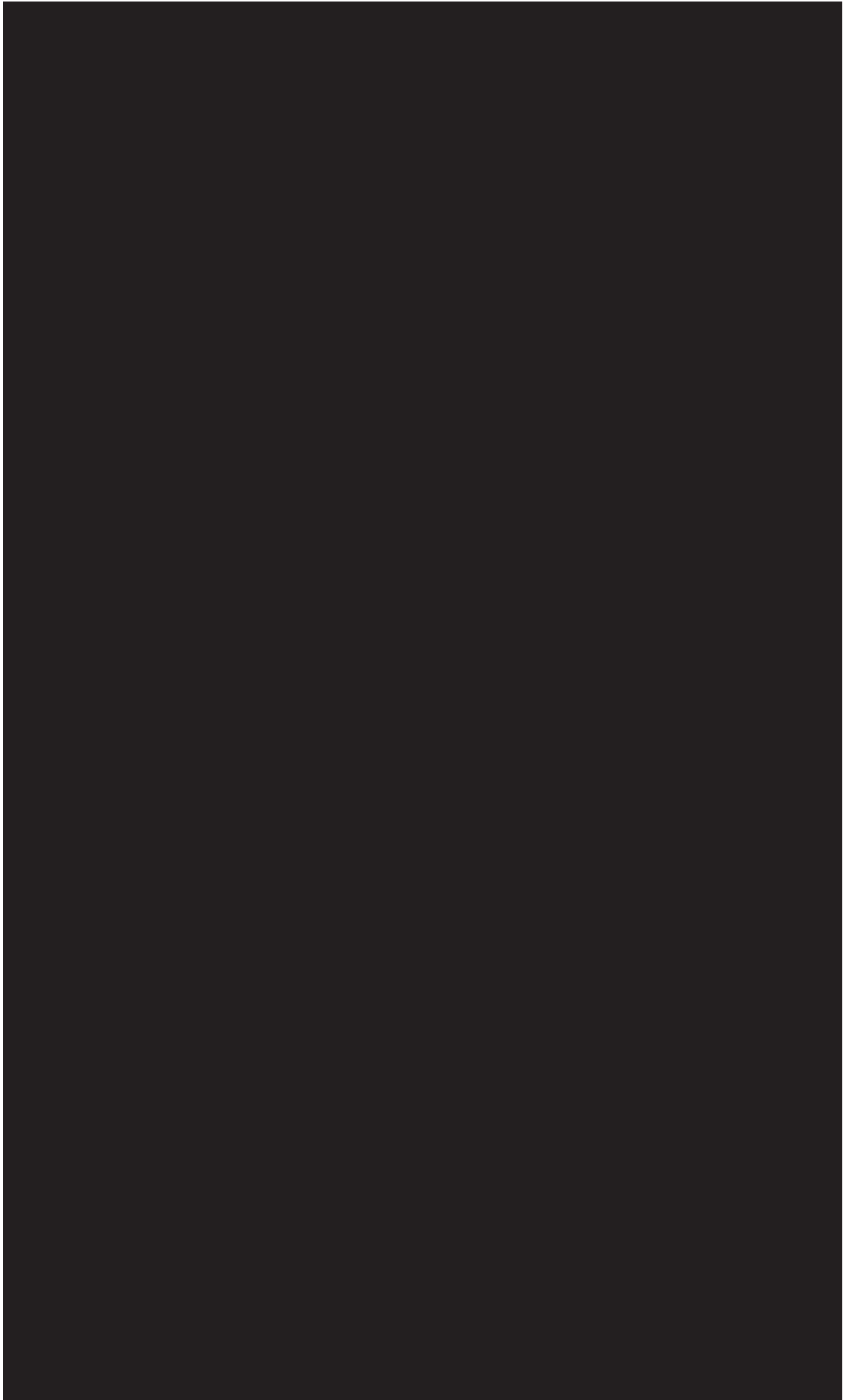
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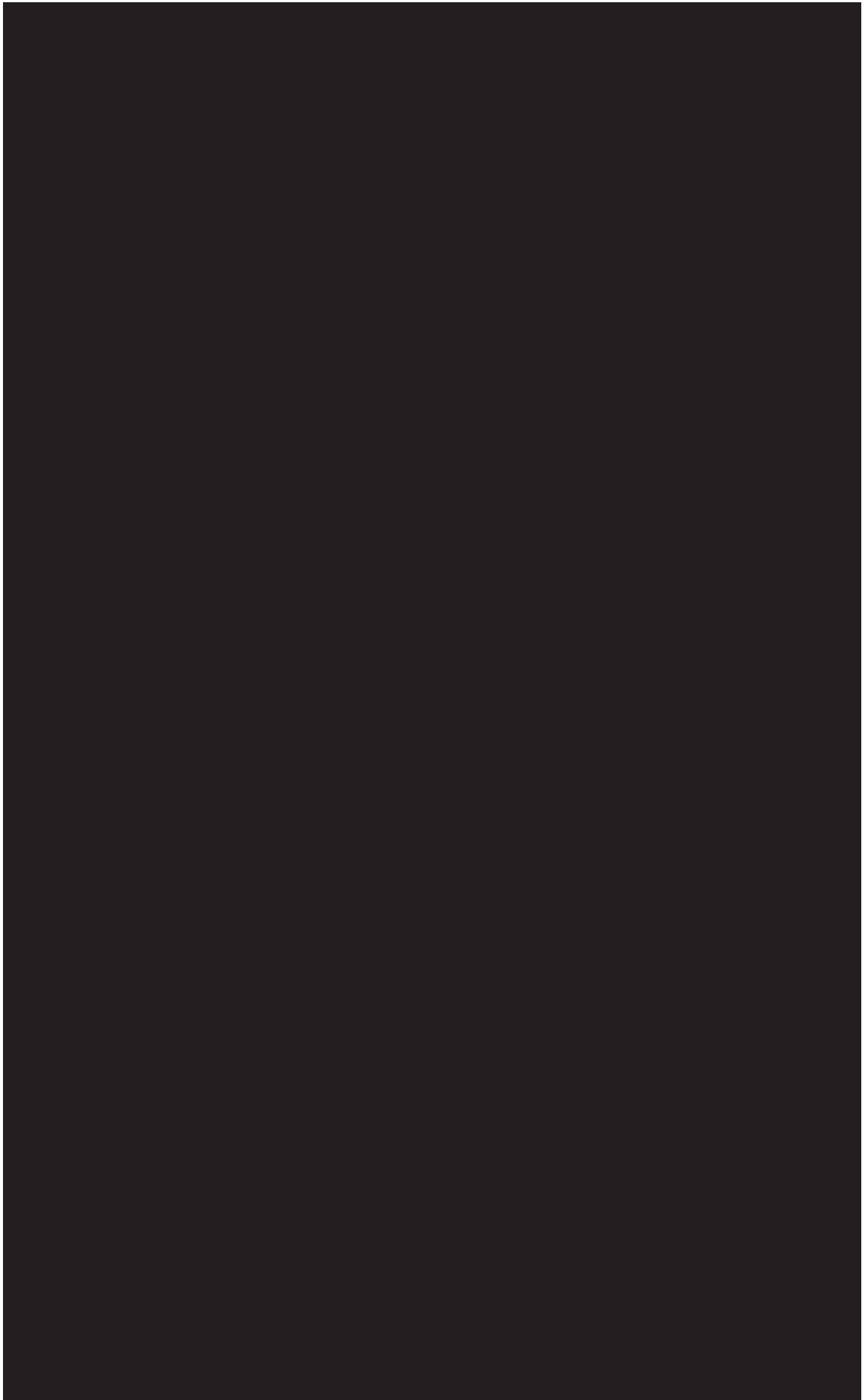
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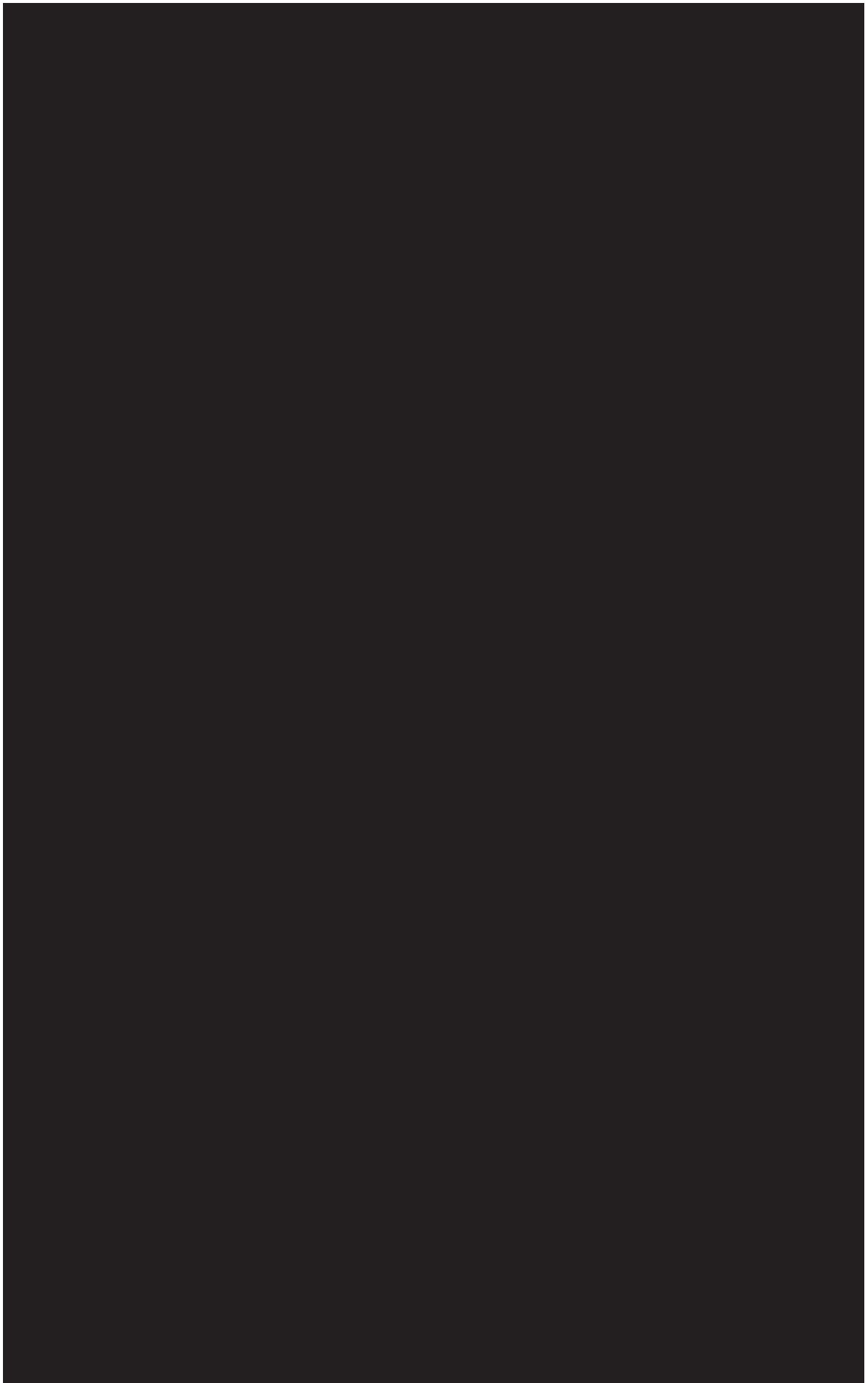
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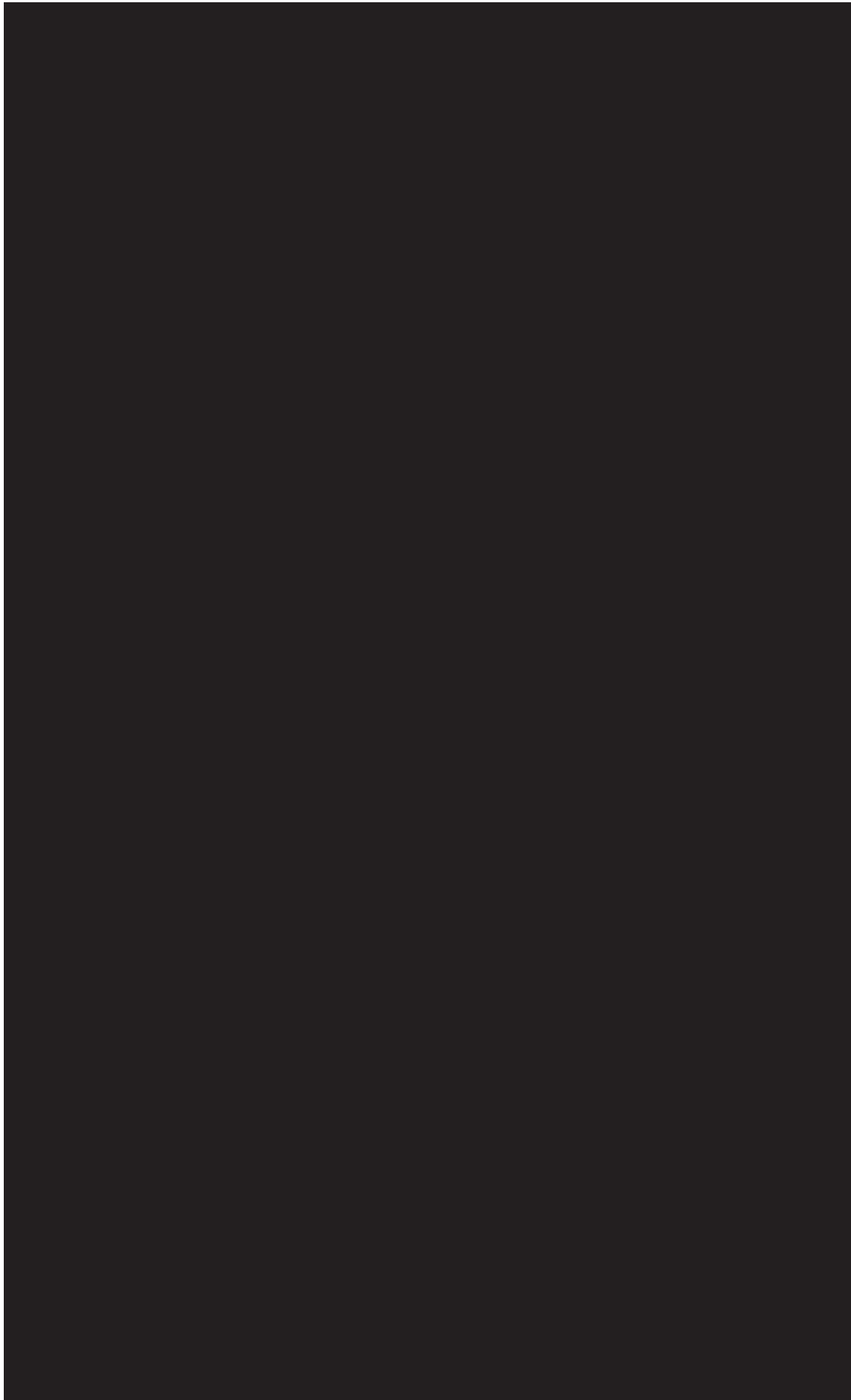
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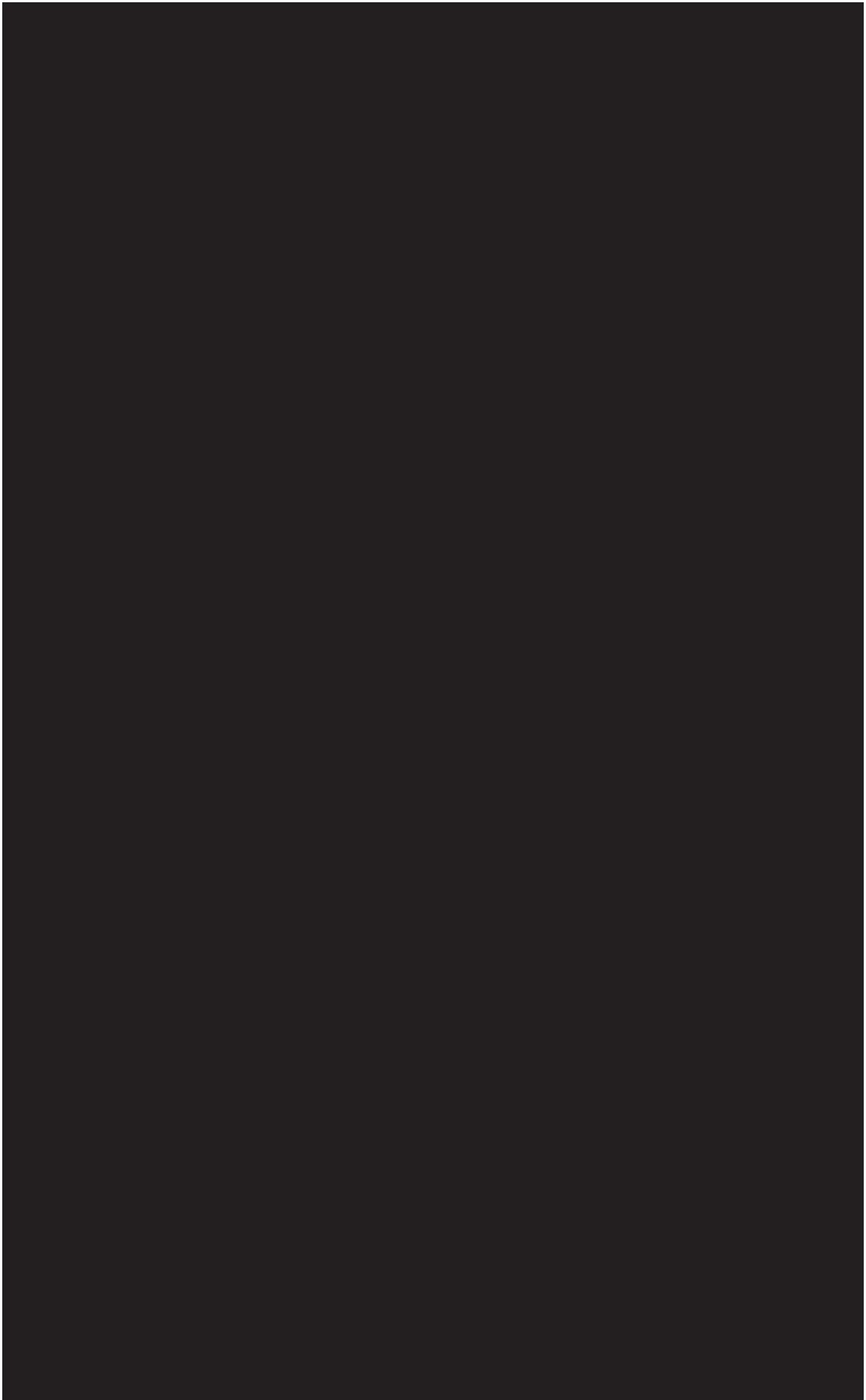
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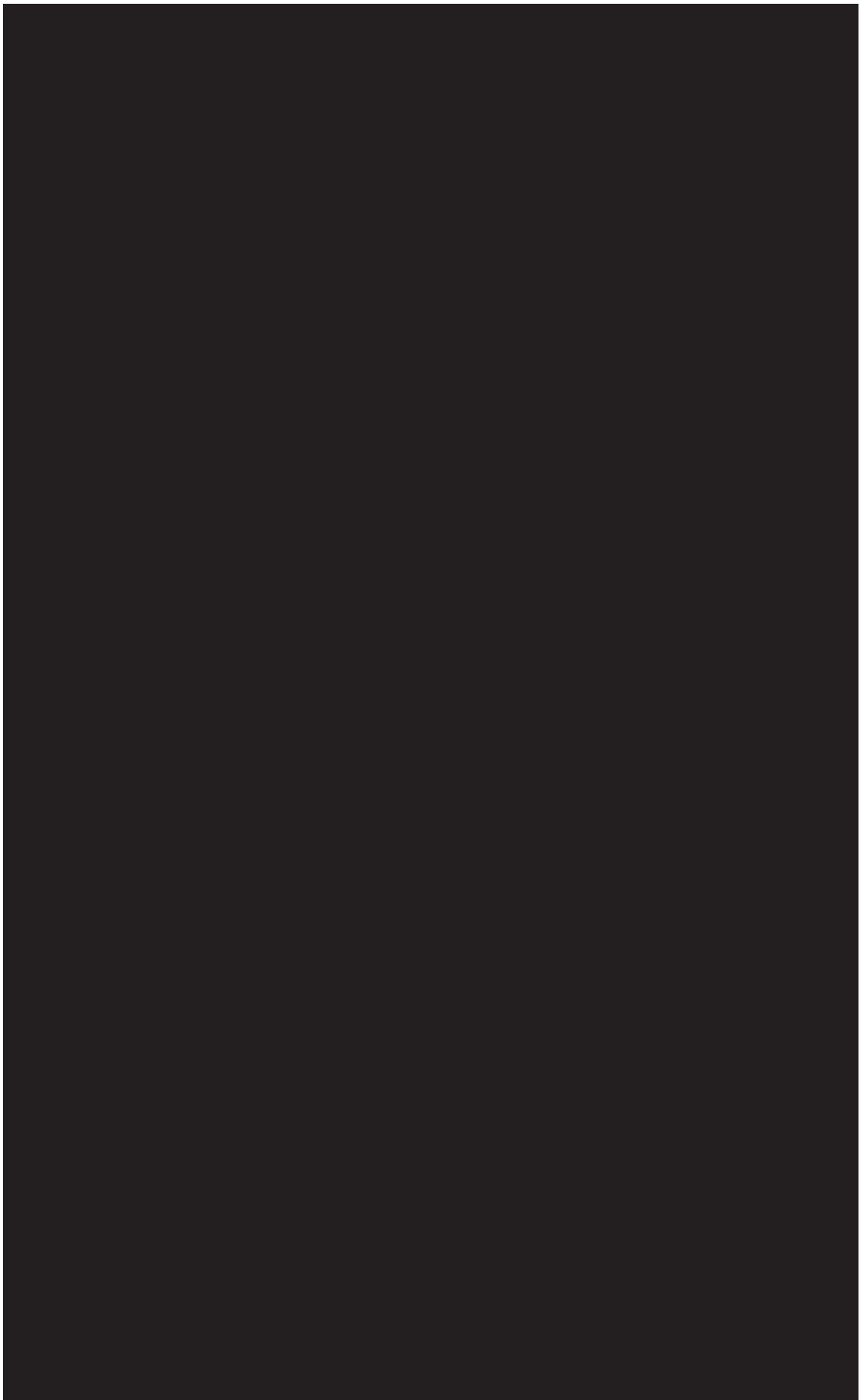
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18 But the point of this was
19 not to produce results for the purposes
20 of determining whether suspicious orders
21 were made and reporting those to the DEA.

22 Q. And this PDMR report is
23 printed every three months, true? This
24 is a three-month report? Do you know

1 that?

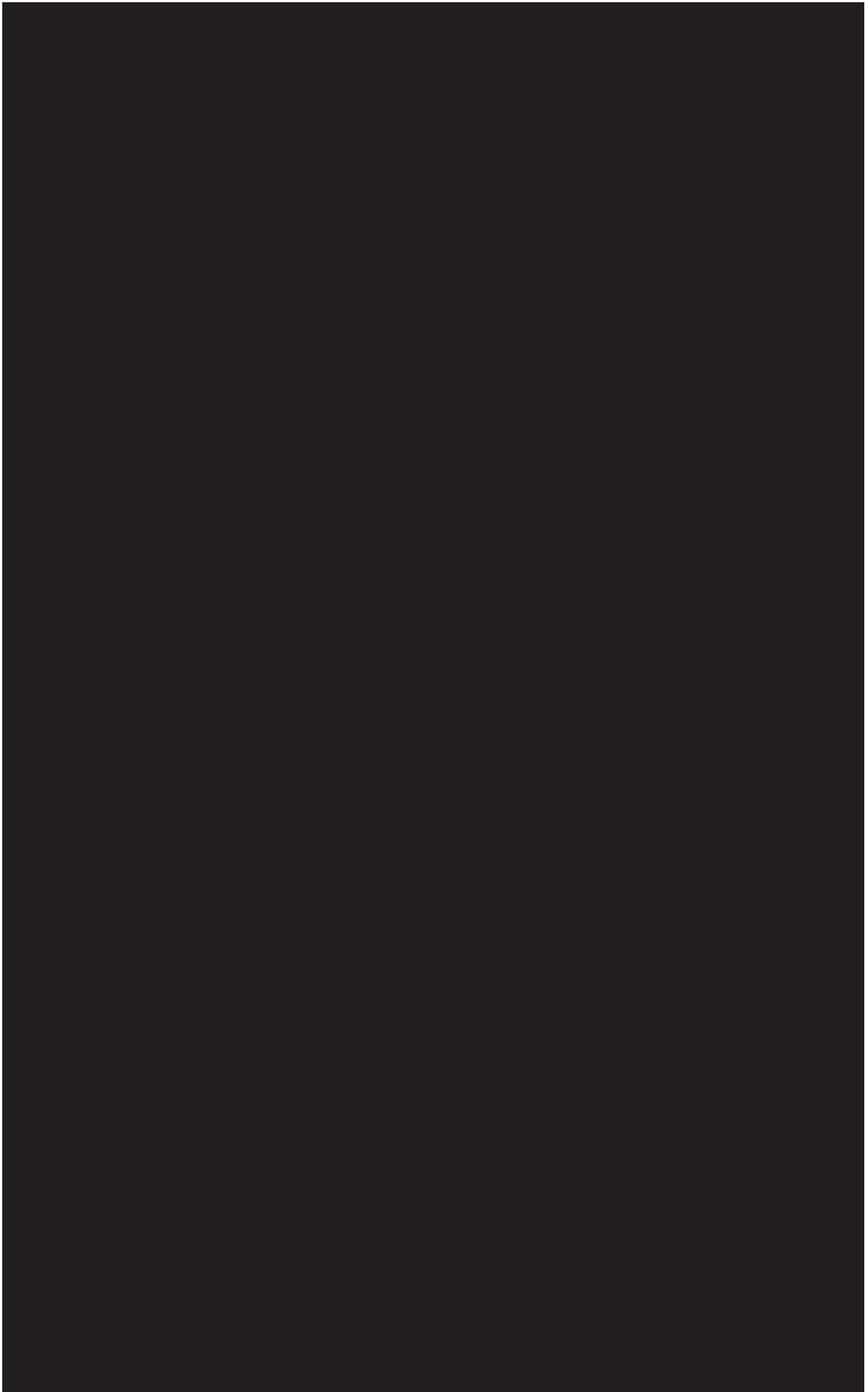
2 A. I believe it's -- perhaps
3 comes out on different cadences over the
4 course of time. To the best of my
5 corporate knowledge, I understood it to
6 be a monthly report.

7 Q. So this isn't -- certainly
8 isn't looked at before any particular
9 order for a controlled substance is being
10 shipped out to one of your pharmacies,
11 true?

12 A. It is not.

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1 Q. And would I be correct to
2 say there were no written policies,
3 procedures and protocols for those
4 pickers and the packers in '06, with
5 respect to their obligations? Nothing in
6 writing?

7 A. In 2006, not in writing. We
8 later have reduced that process to
9 writing, as a part of a policy.

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[REDACTED]

Q. Can you describe to me the training program that the pickers and the packers went through to identify unusual orders of size, frequency or pattern?

MR. DELINSKY: Object to form.

THE WITNESS: Are you speaking -- in which time period?

BY MR. KENNEDY:

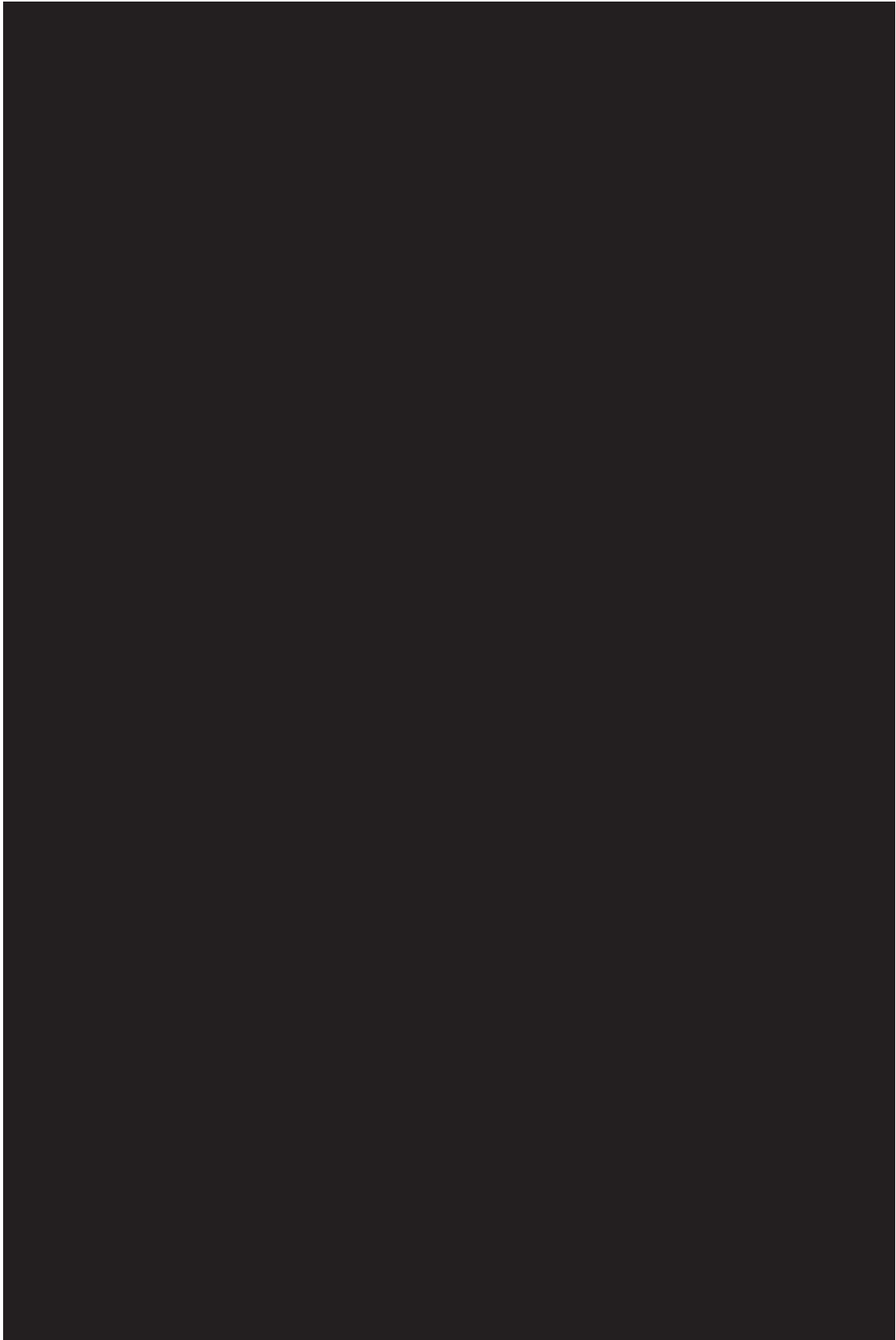
Q. In '06. In '06.

A. To the best of my corporate knowledge, there was no formal training program. However, the pickers and the packers who I spoke with who worked in that environment in 2006 told me that they were aware of that component of their job responsibilities and had acquired that knowledge in the course of their employment.

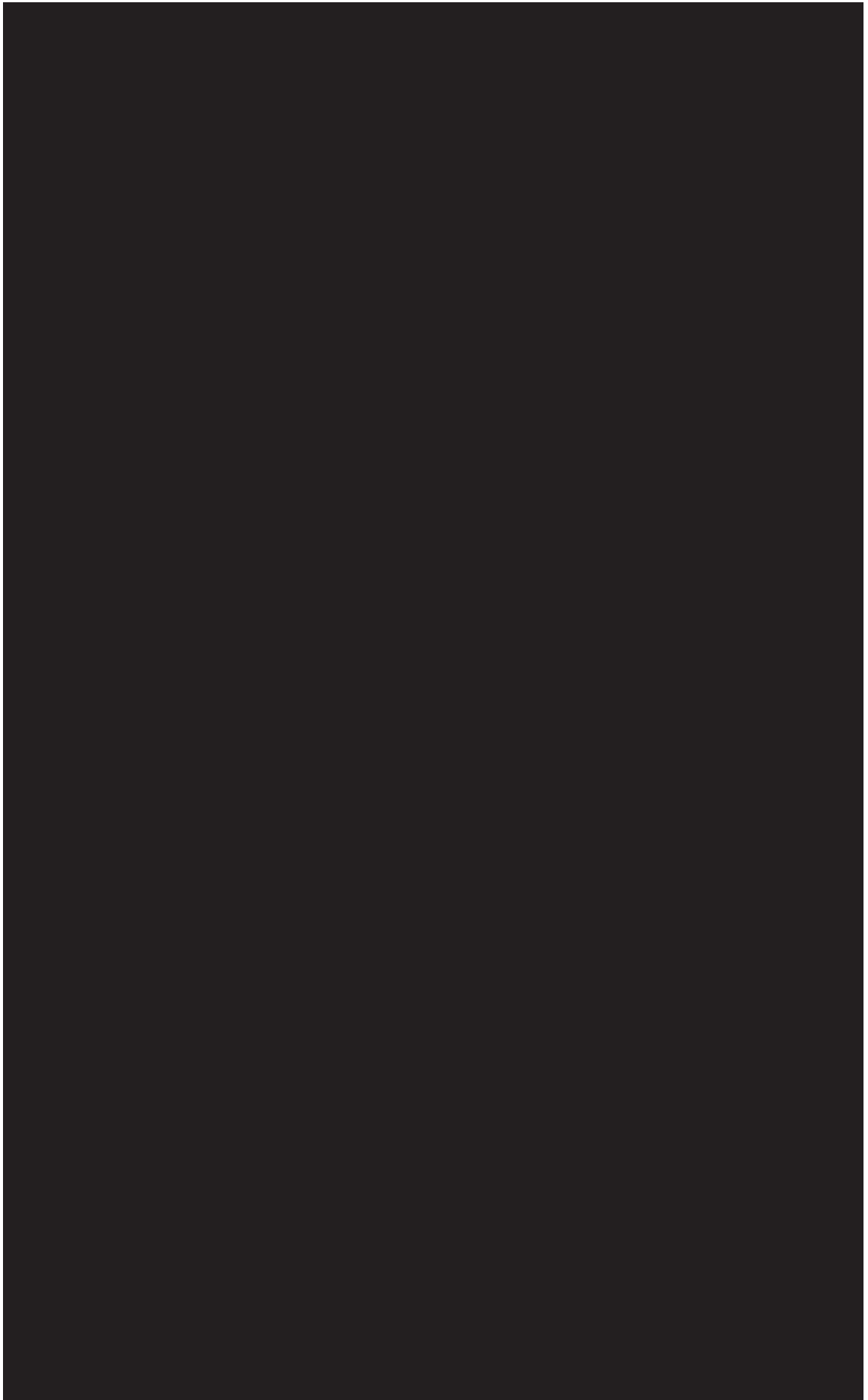
Q. And what were the job requirements to be a picker and a packer at a CVS distribution center in 2006?

1 A. I'm unaware of the formal
2 job requirements. I have been told that

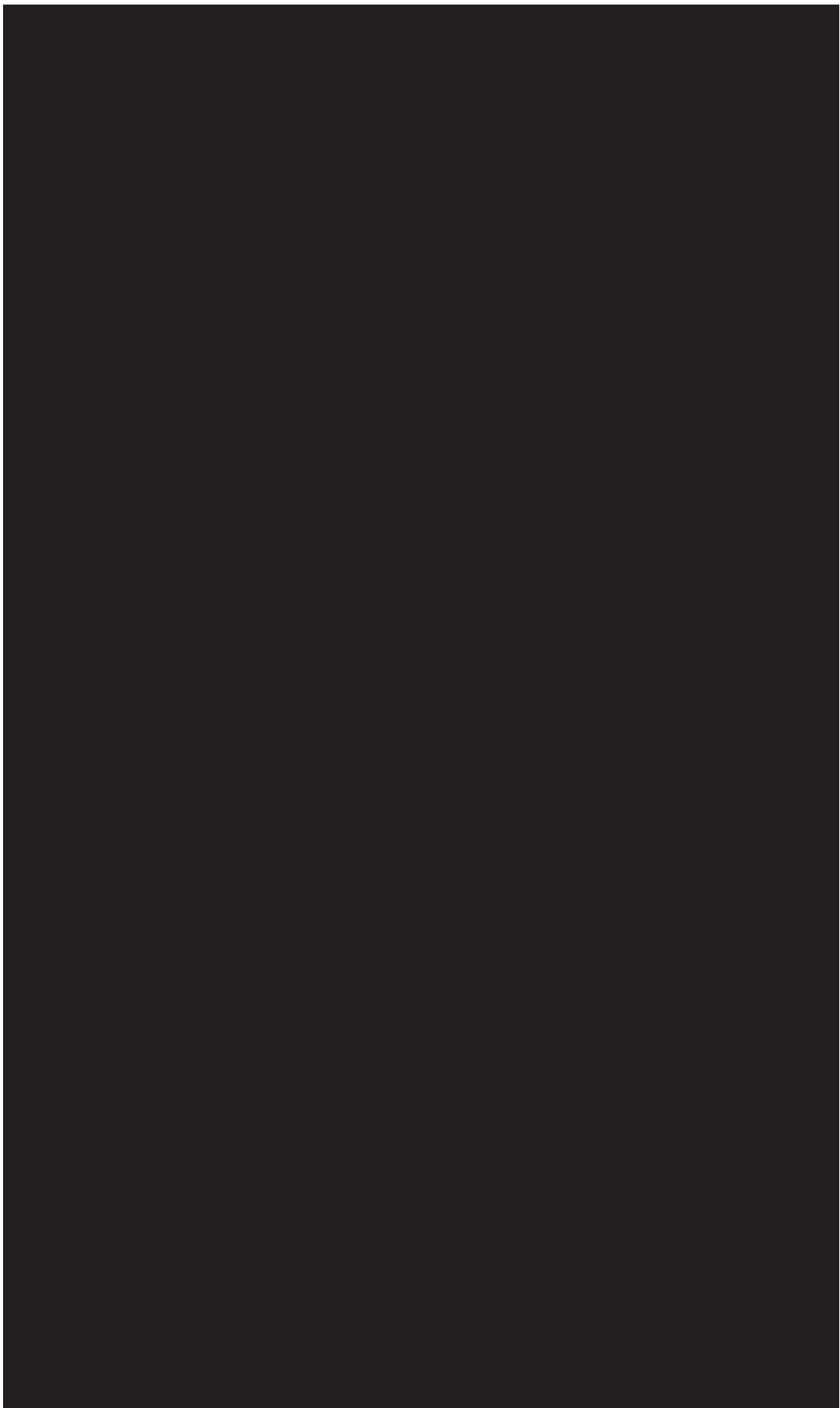
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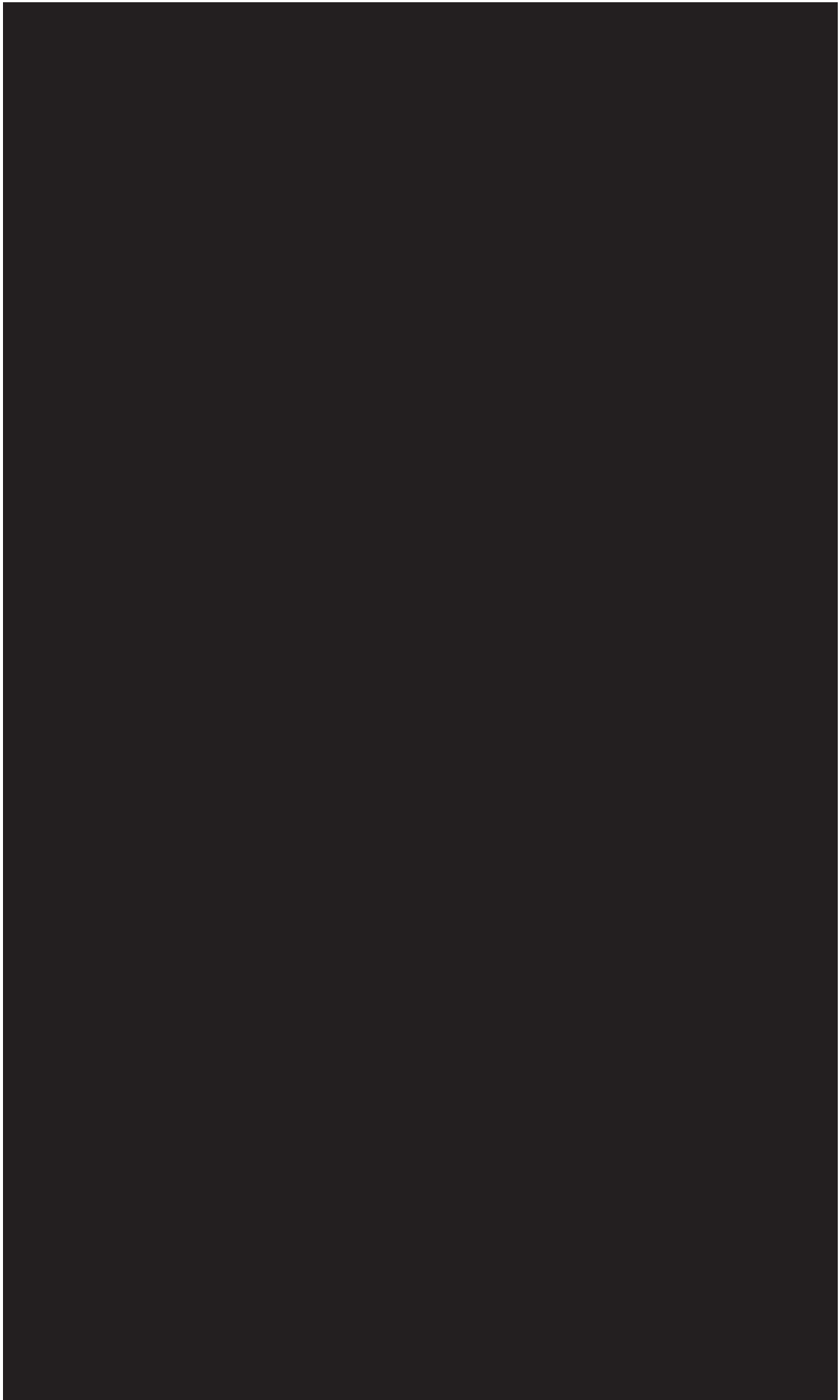
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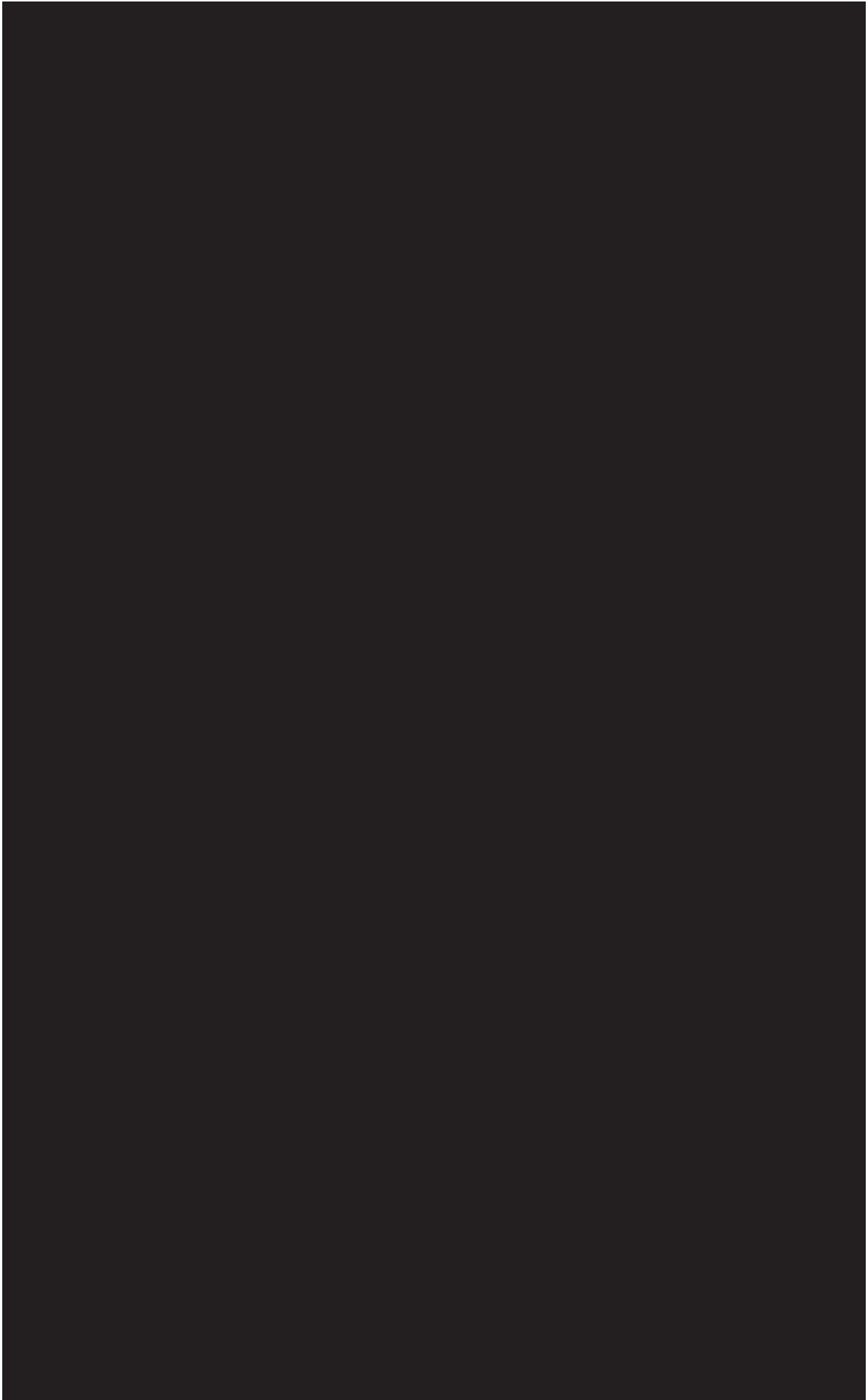
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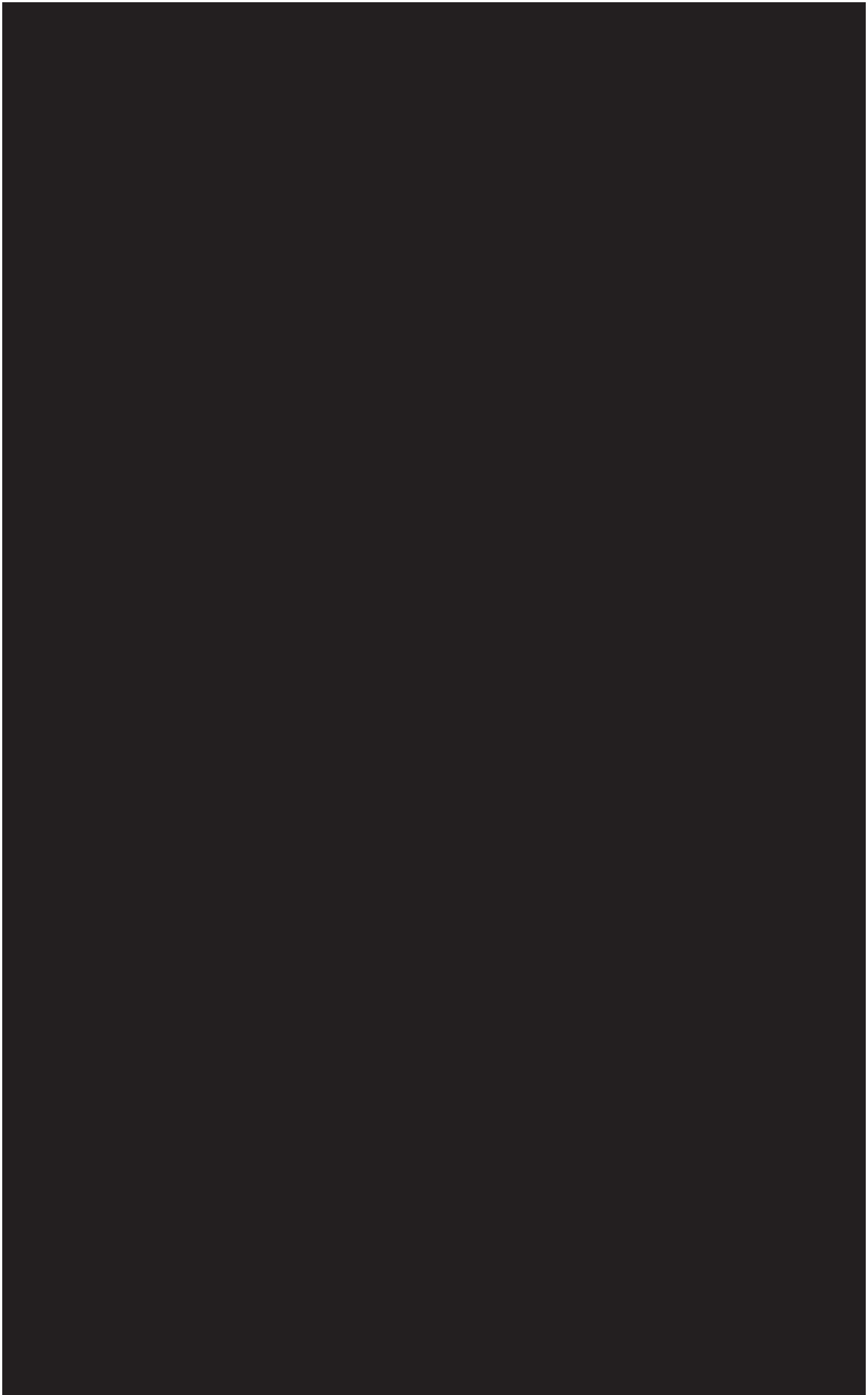
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22 Q. Well, then, we'll go through
23 this a little bit more carefully.
24 Do you agree with her

1 statement here, We are still in the
2 process of writing the suspicious order
3 monitoring section of this standard
4 operating procedure?

5 As of this date, do you
6 agree that it was still being written, in
7 November of 2007? Do you agree with that
8 statement?

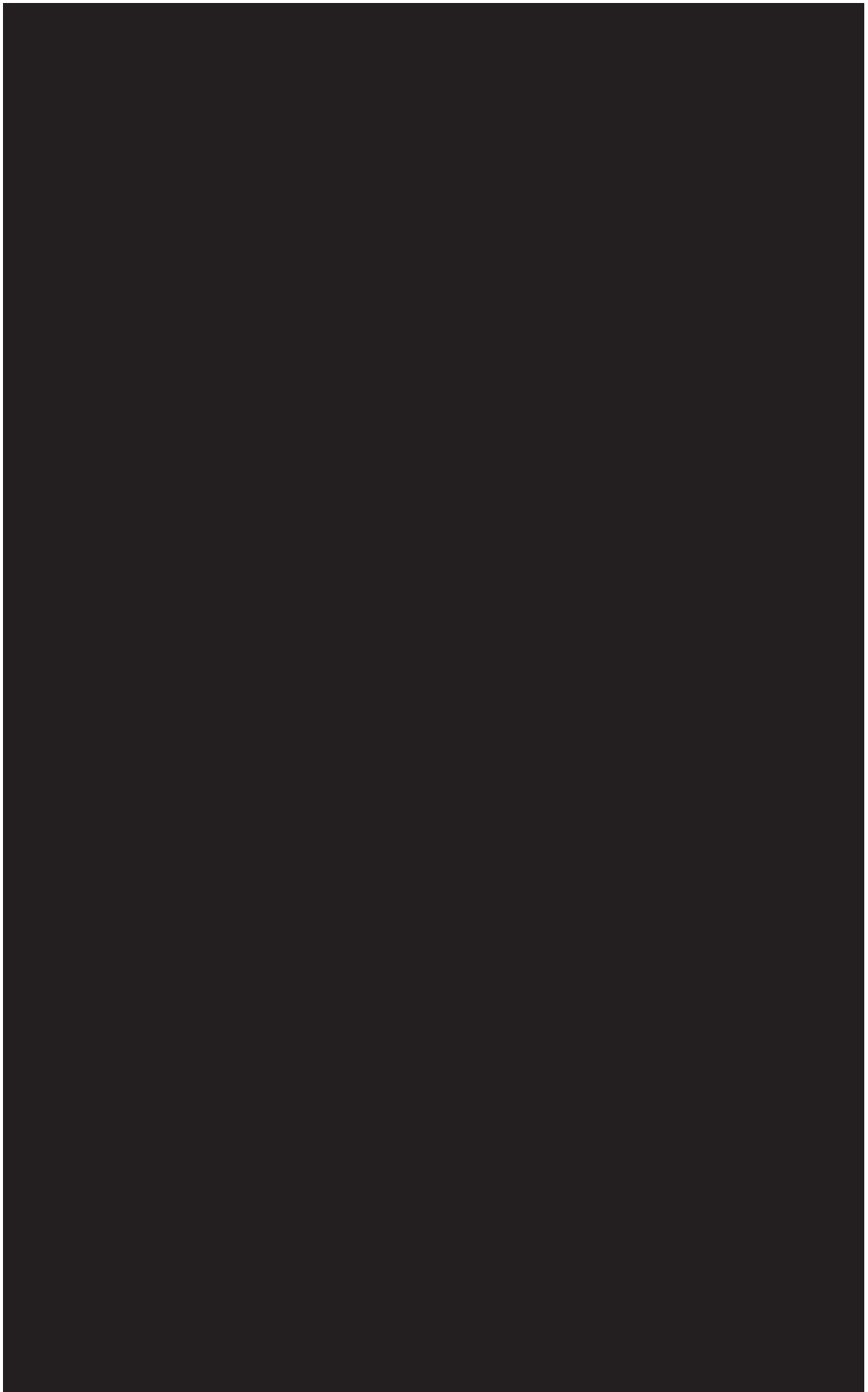
9 A. To the best of my corporate
10 knowledge, that is true.

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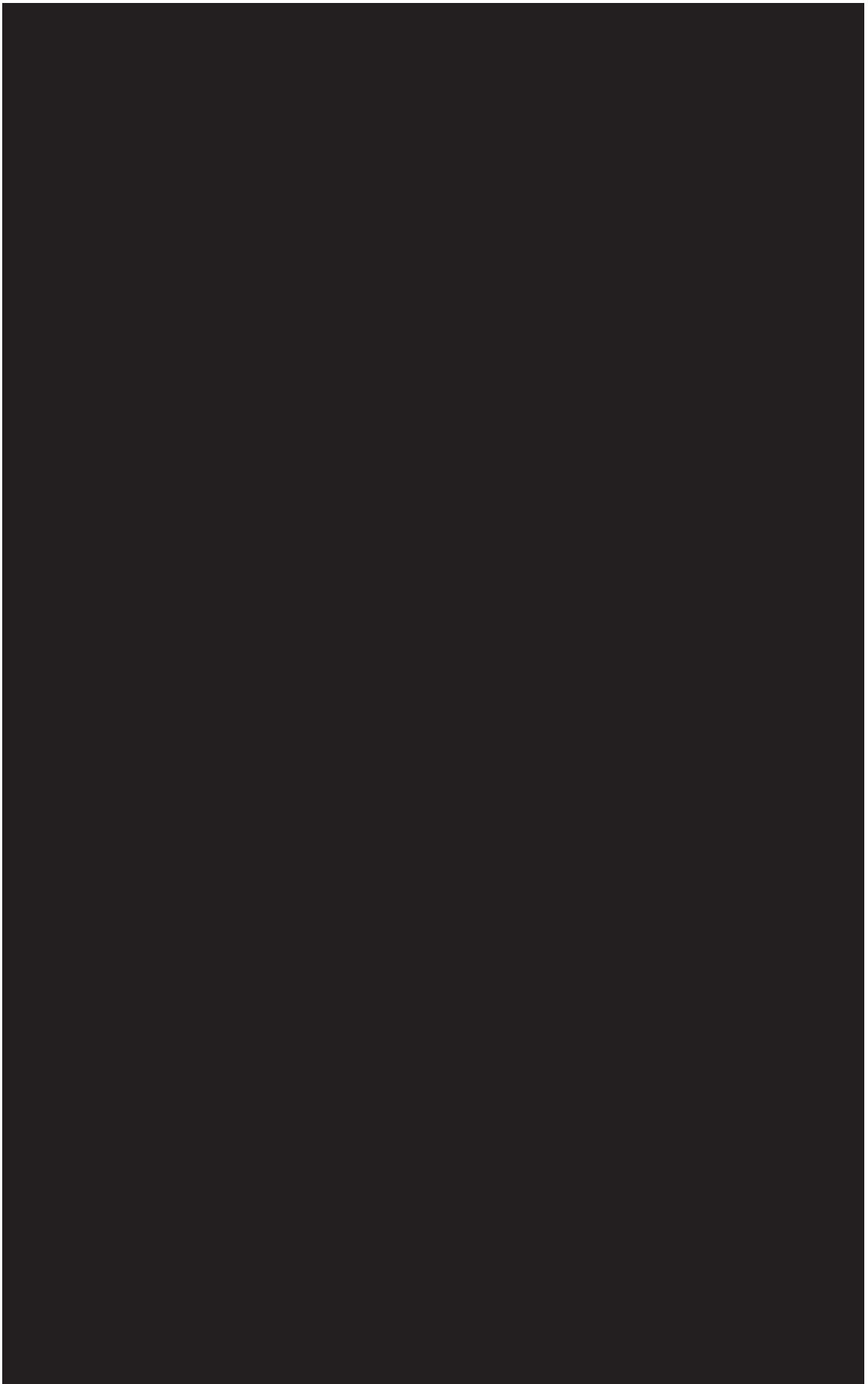
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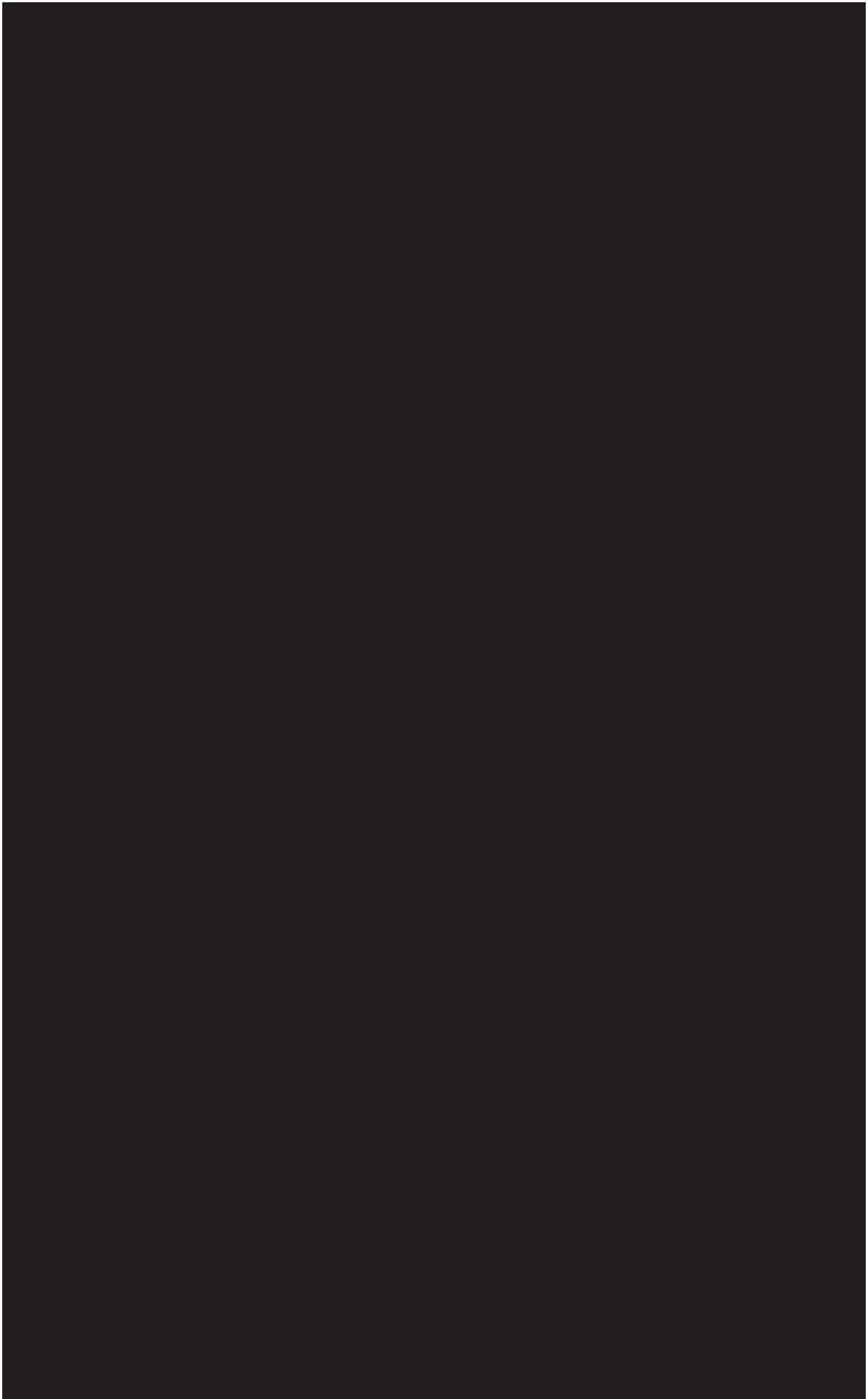
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Q. All right. So what we're seeing in Exhibit-6 is not the suspicious order monitoring policy that was put into effect on 12/1/07; is that what you're saying?

A. What I'm saying is I don't believe that there was a suspicious order monitoring policy put into place as of that date.

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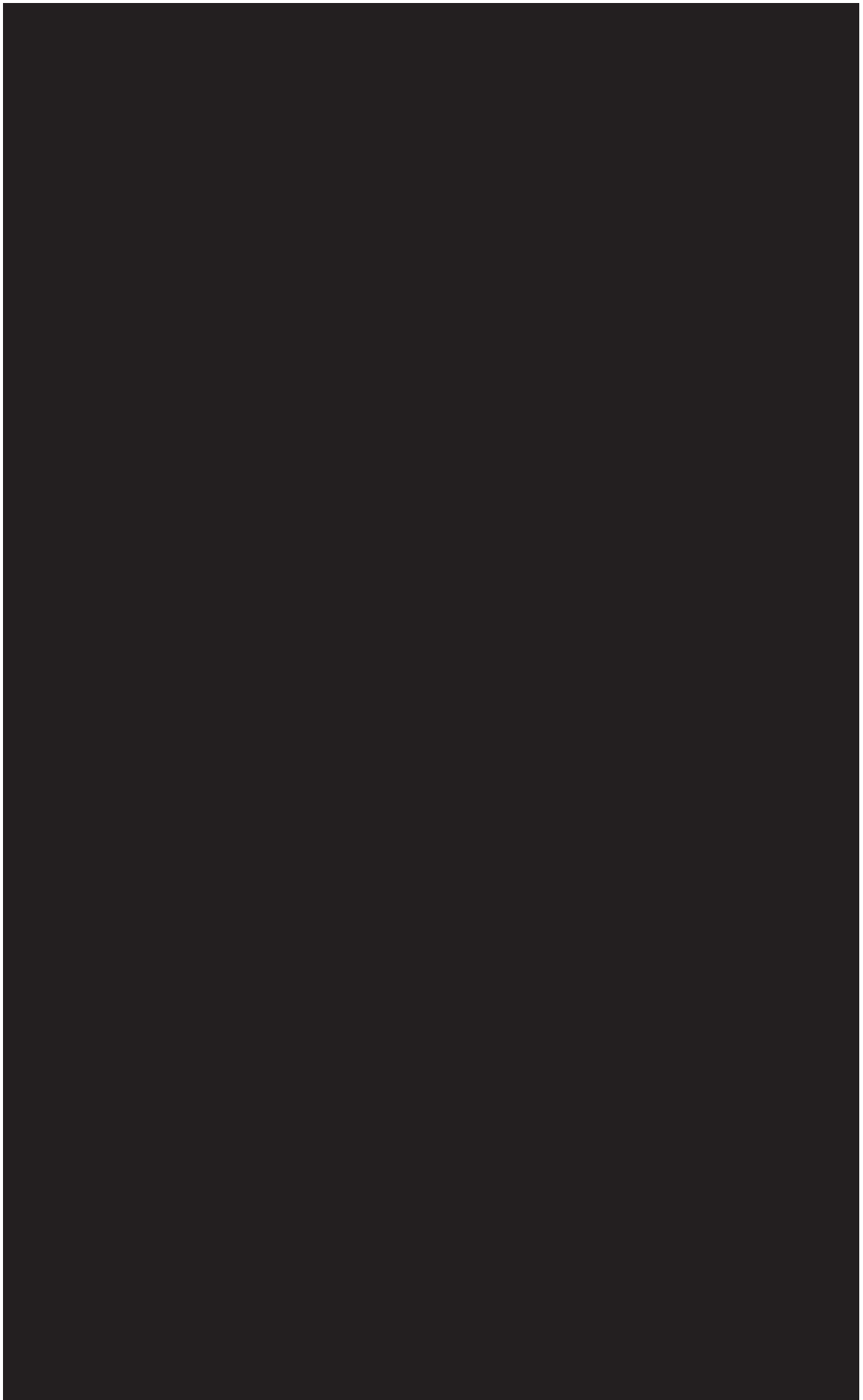
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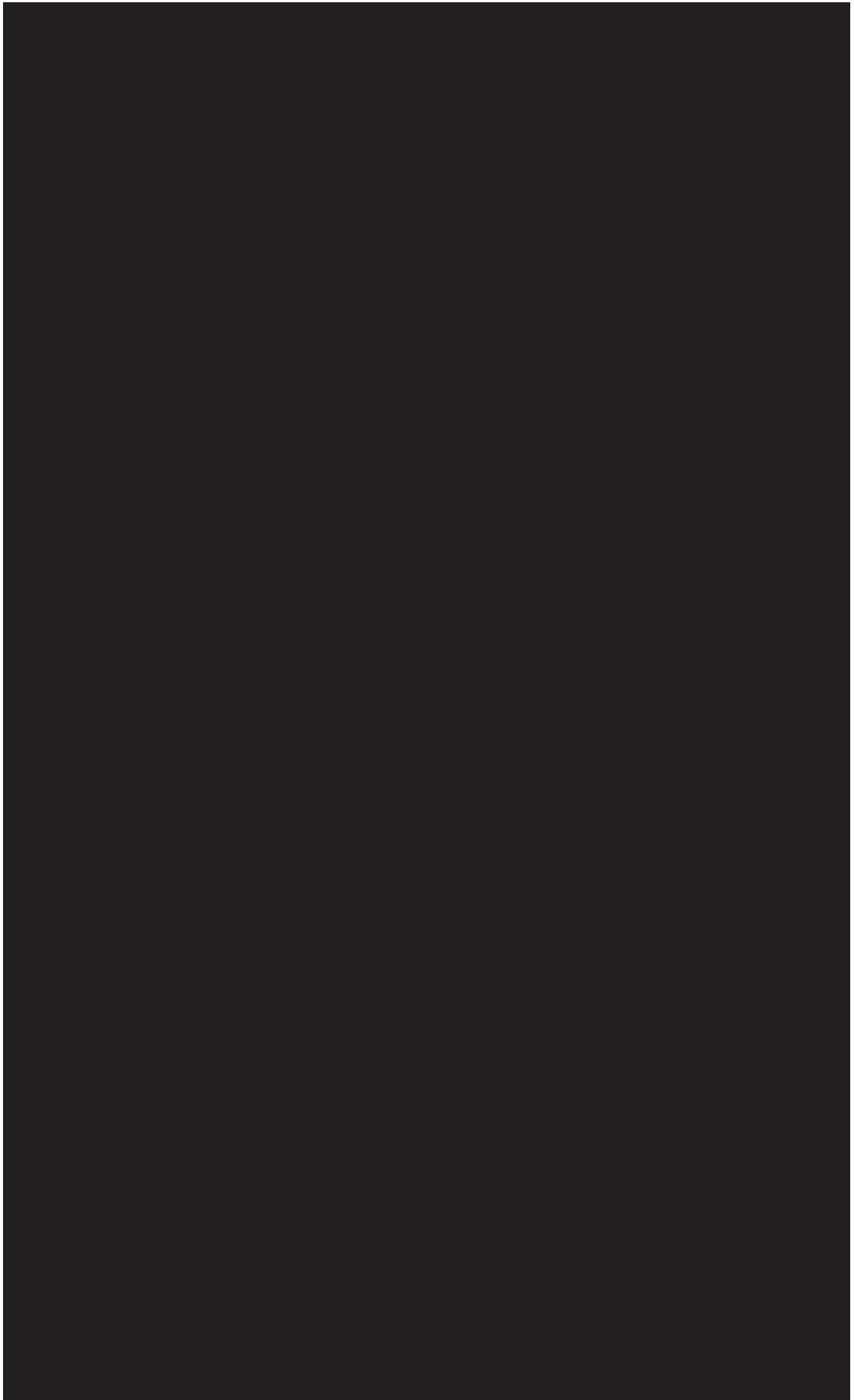
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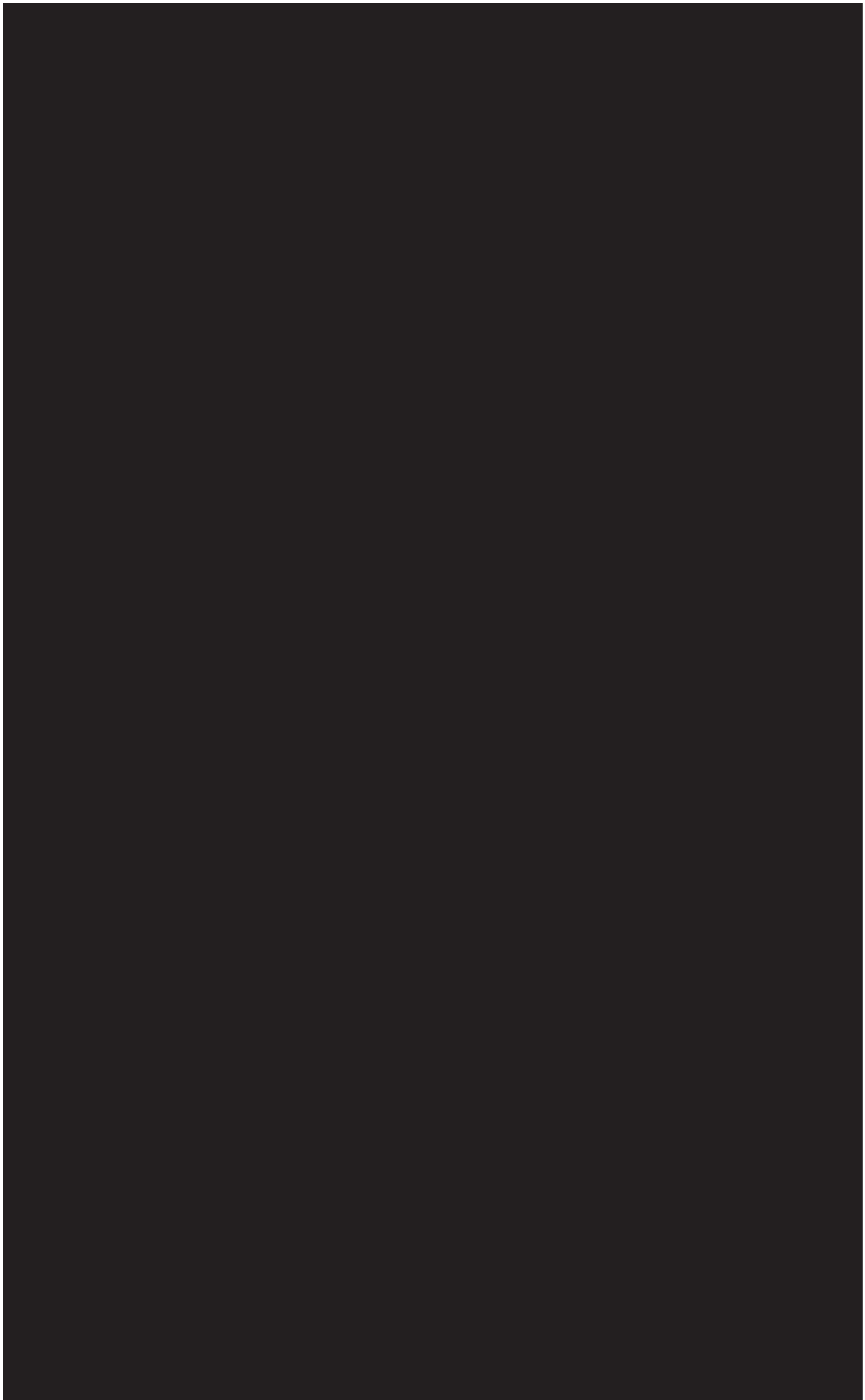
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We agree, at this point in time now, it's April of '09, and the standard -- or, excuse me, the suspicious order monitoring section is still not included in the standard operating procedures, correct?

A. A final version is not included in the standard operating procedures being referenced by Mrs. Propatier in this e-mail.



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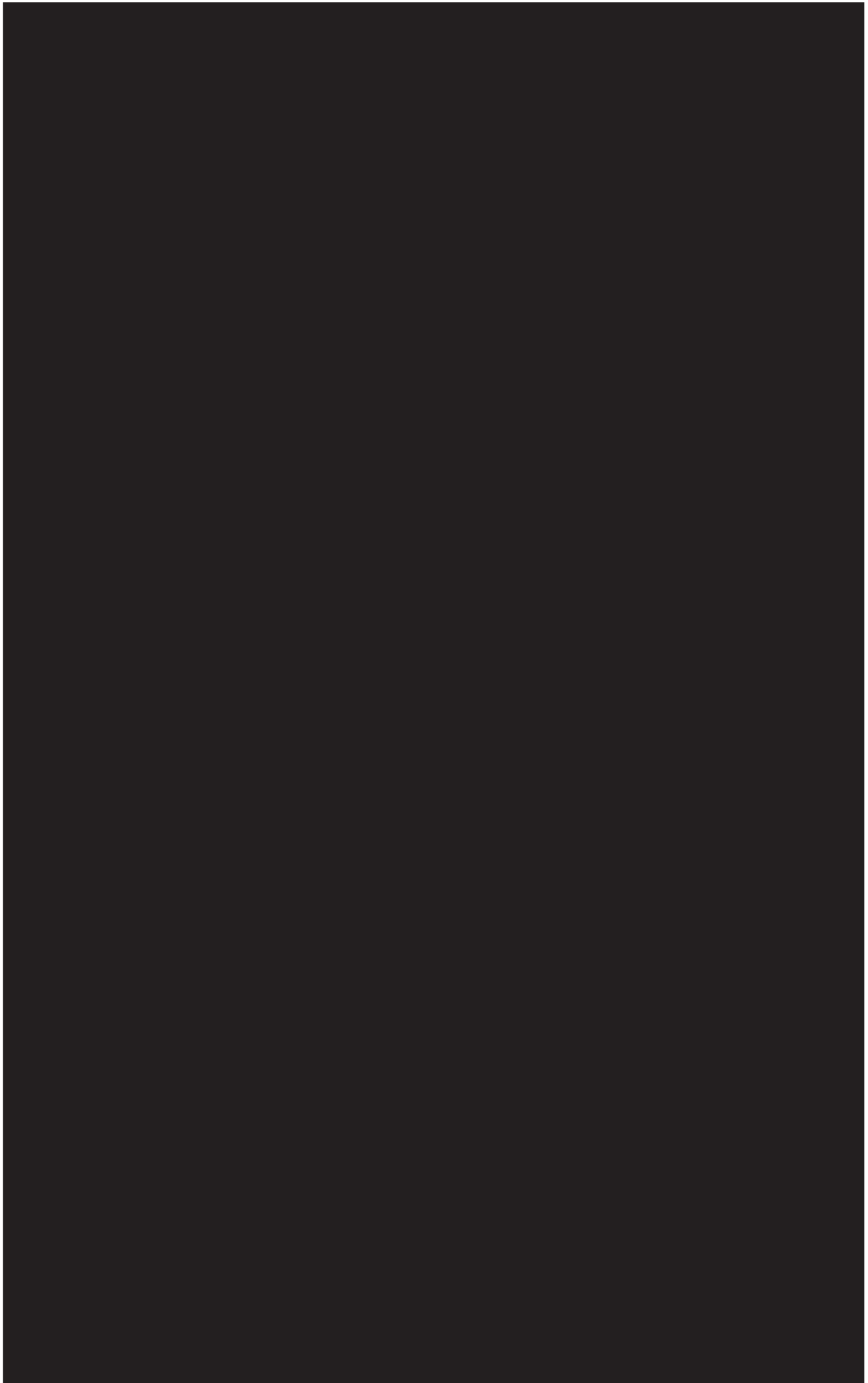
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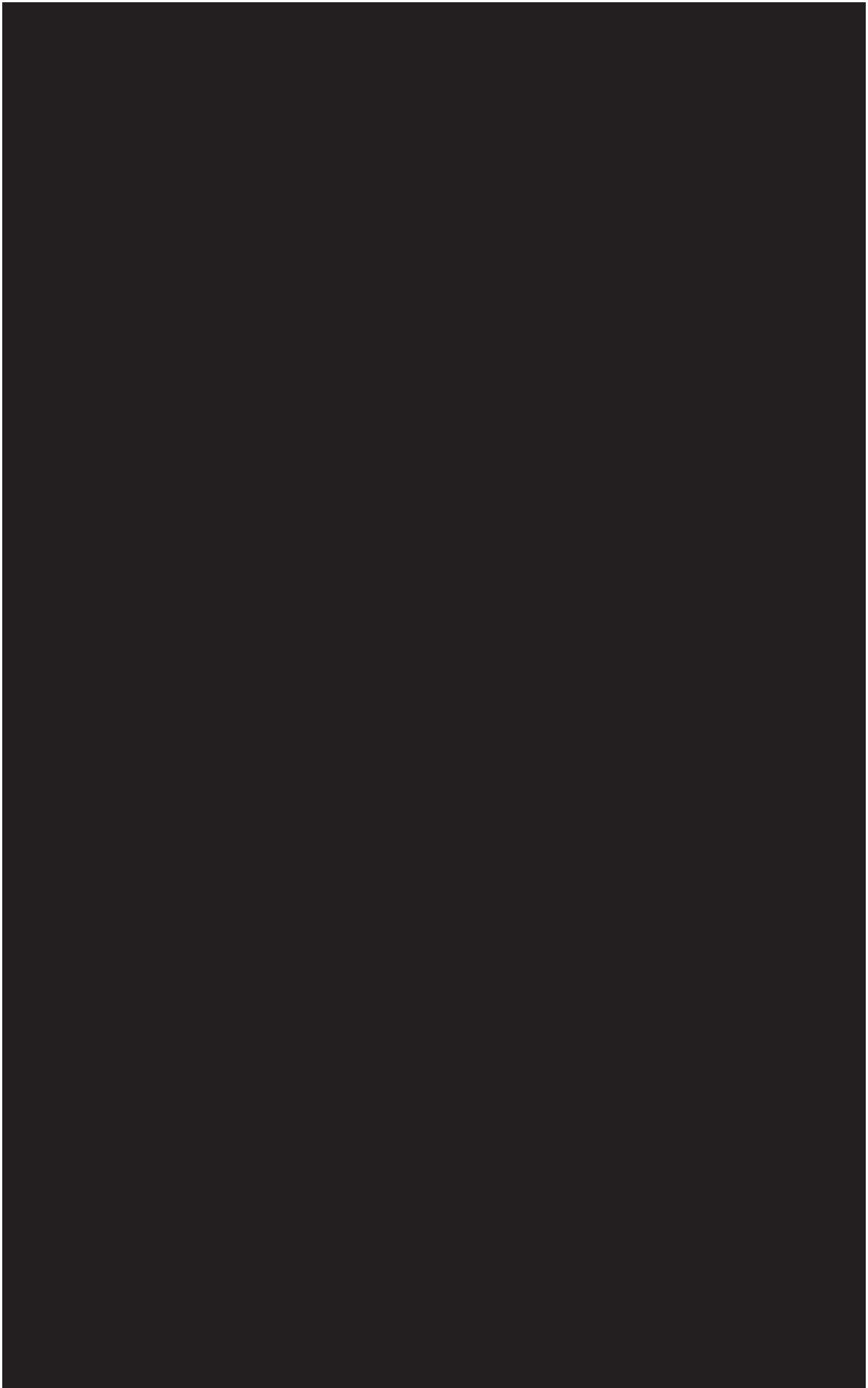
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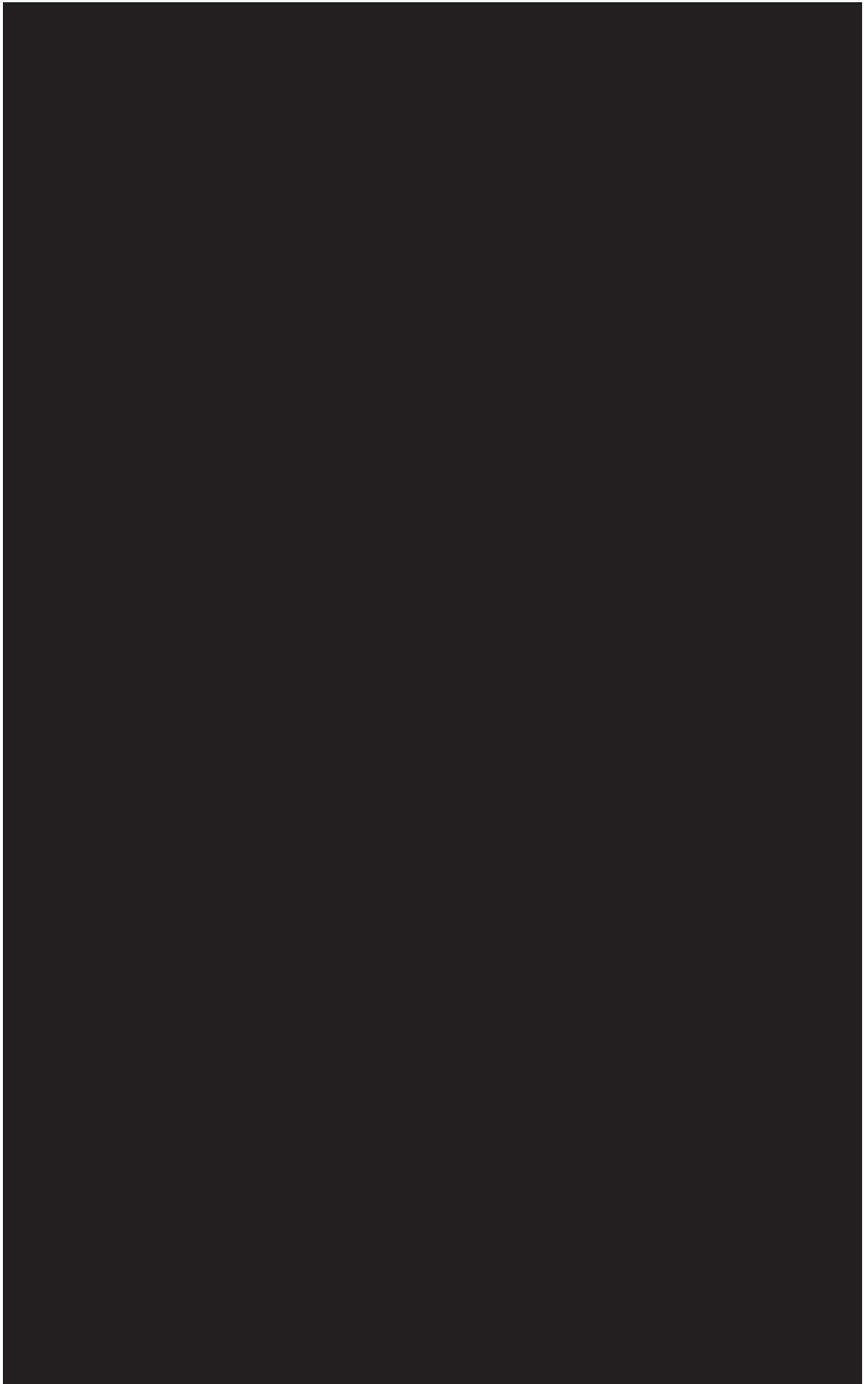
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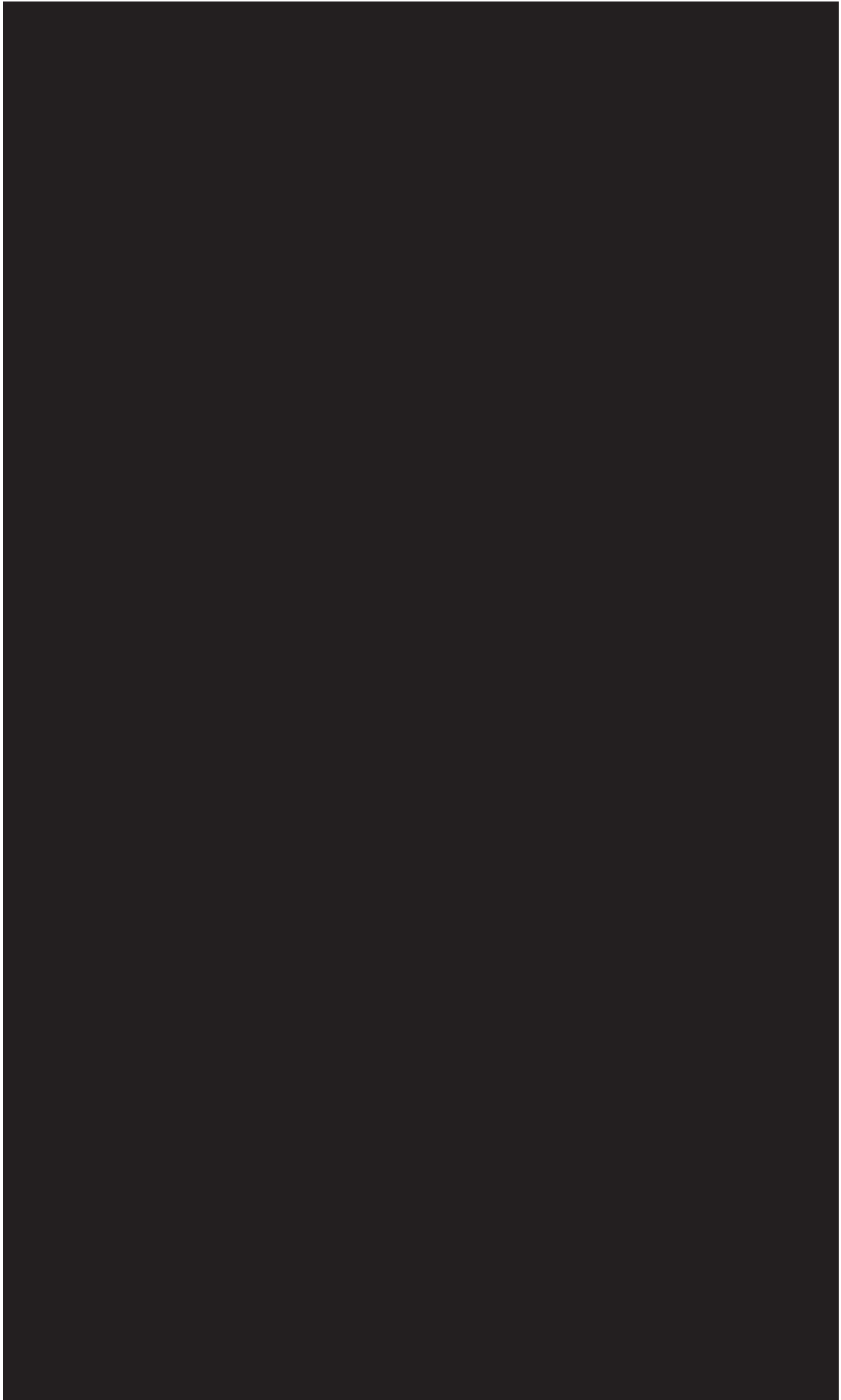
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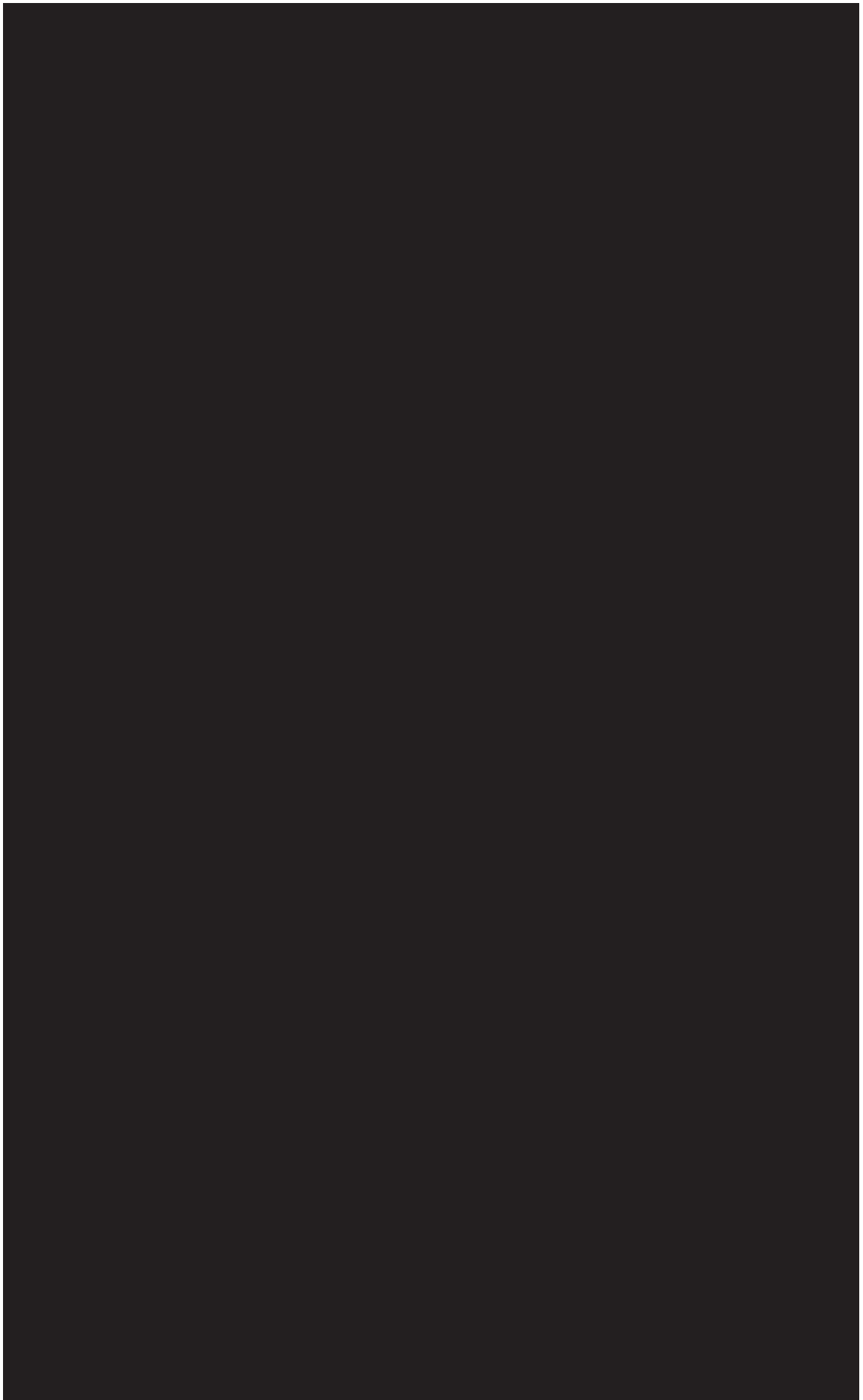
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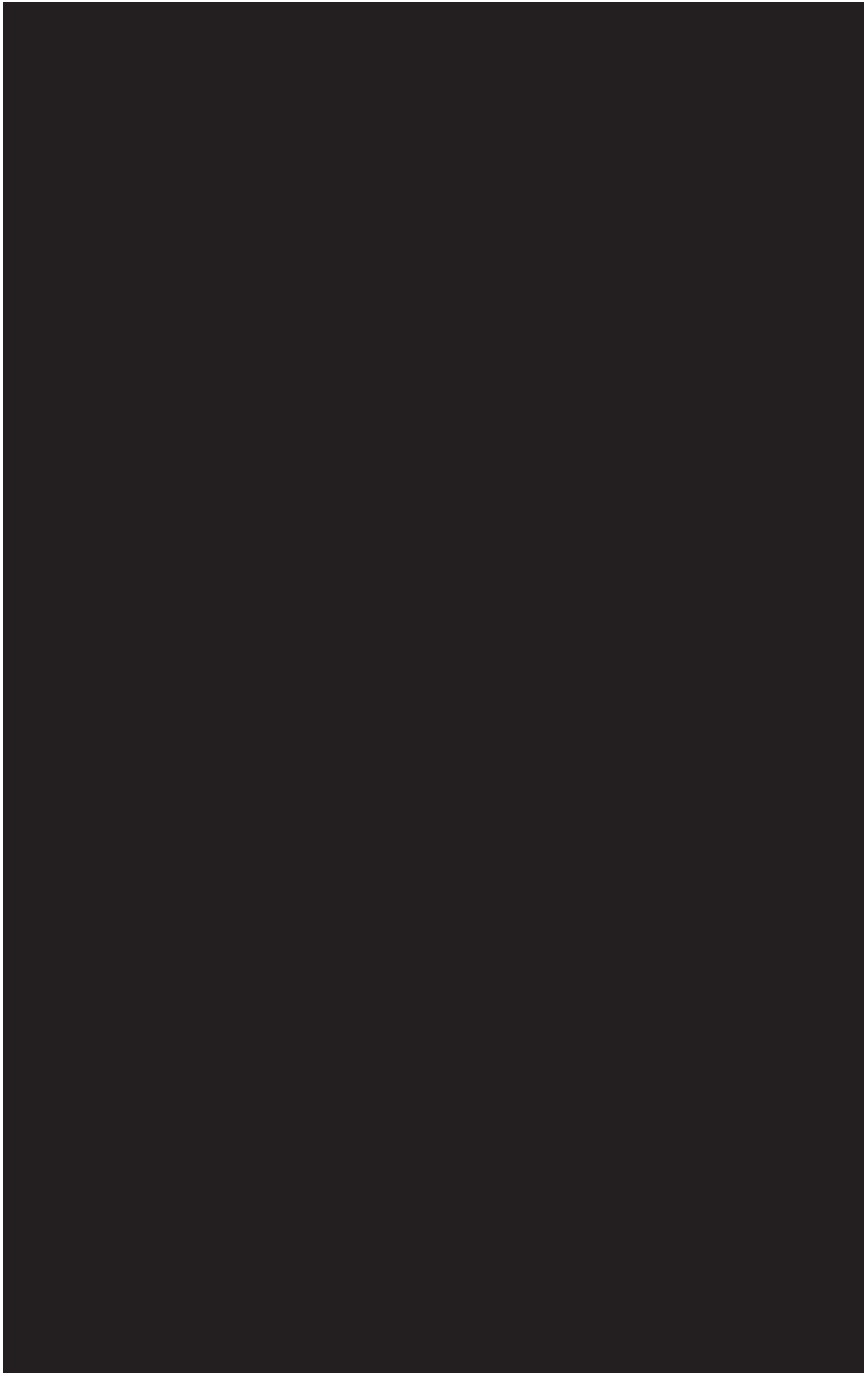
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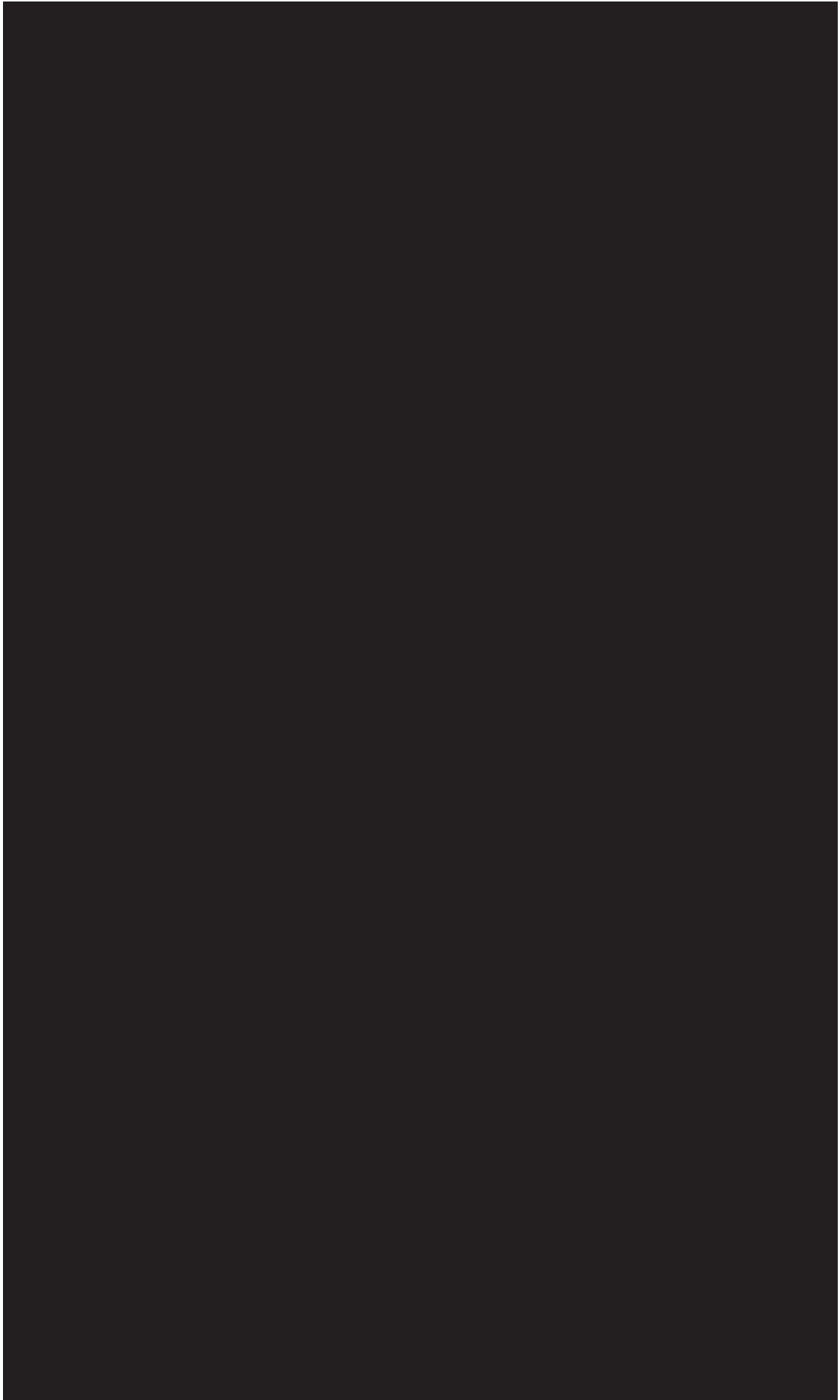
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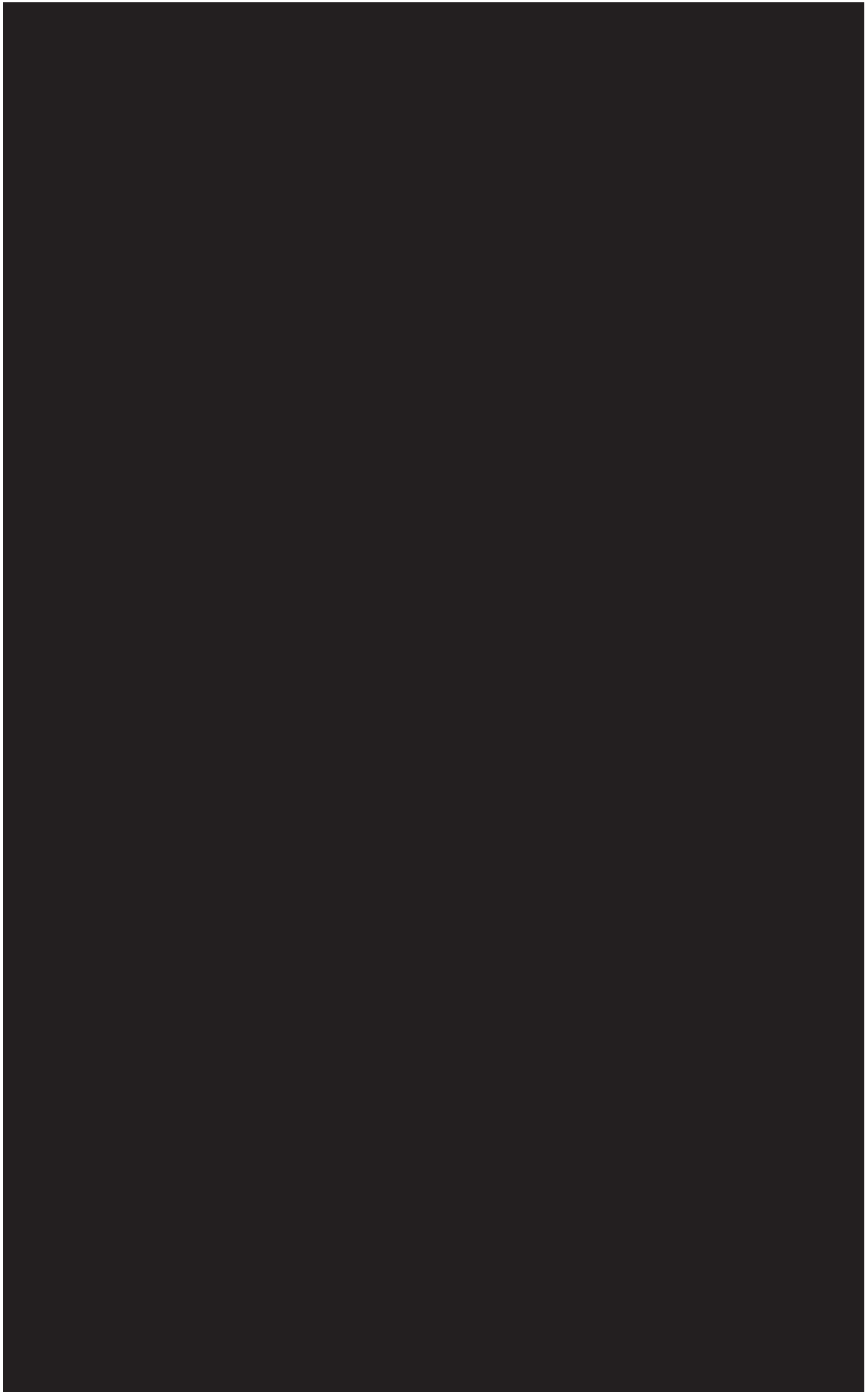
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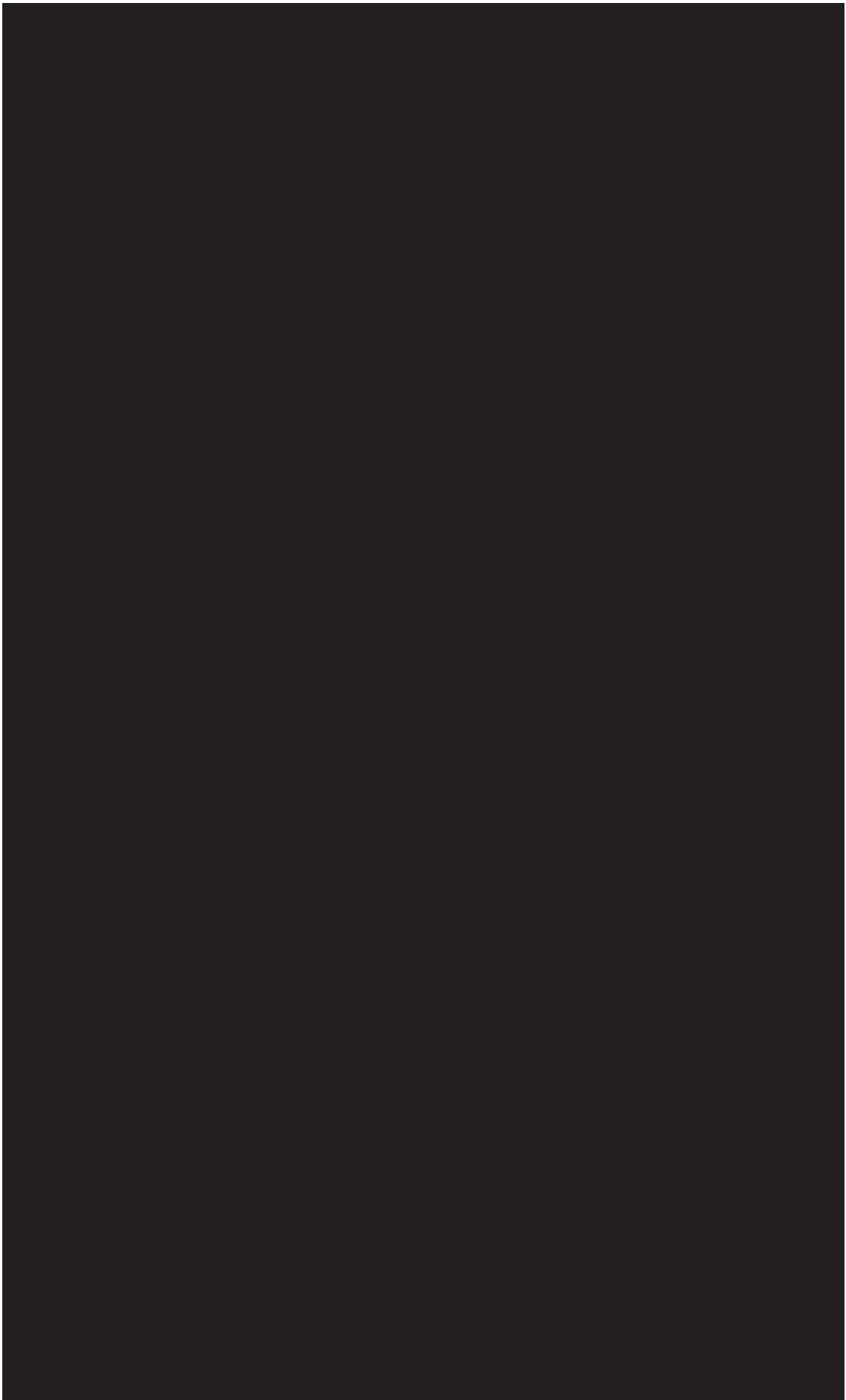
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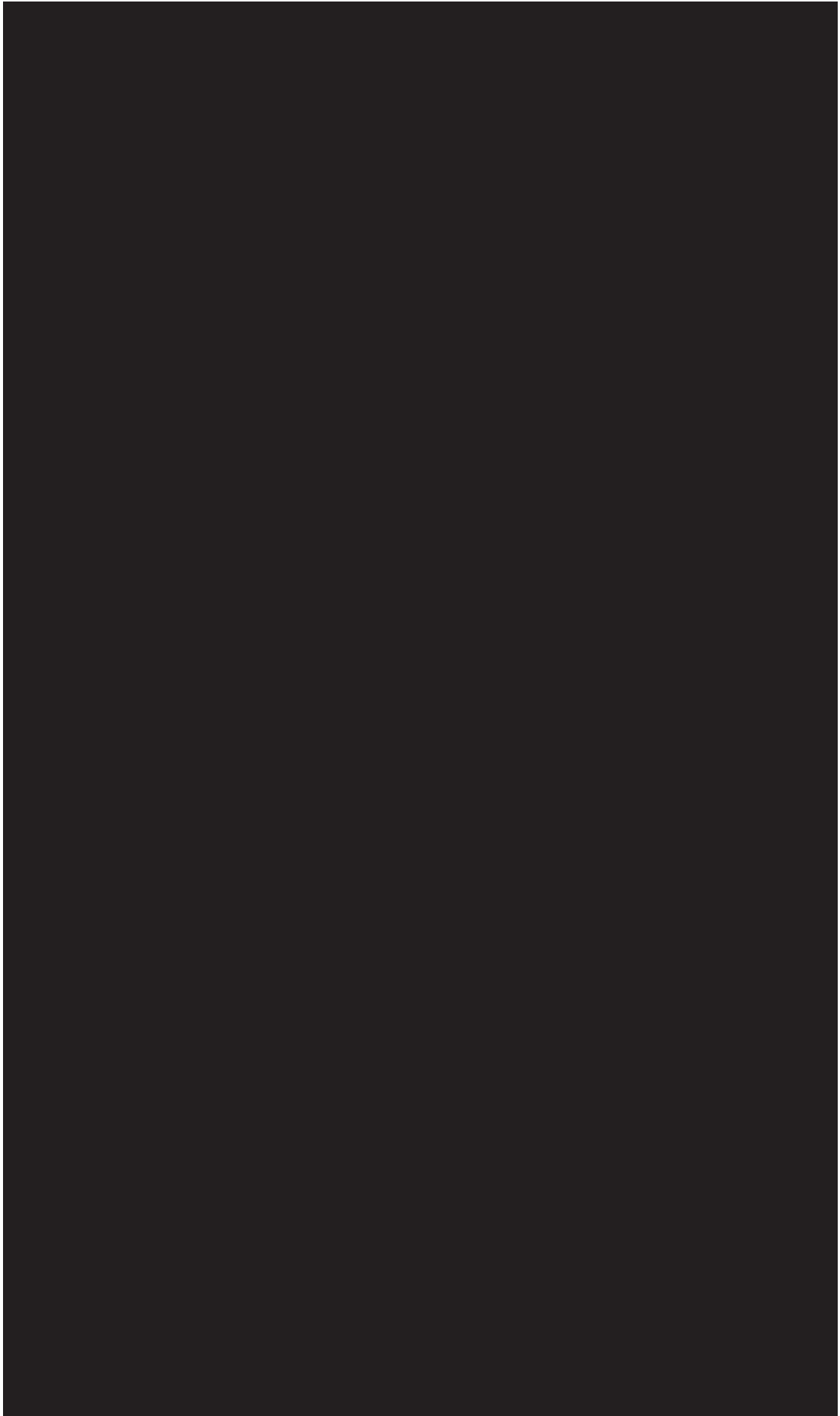
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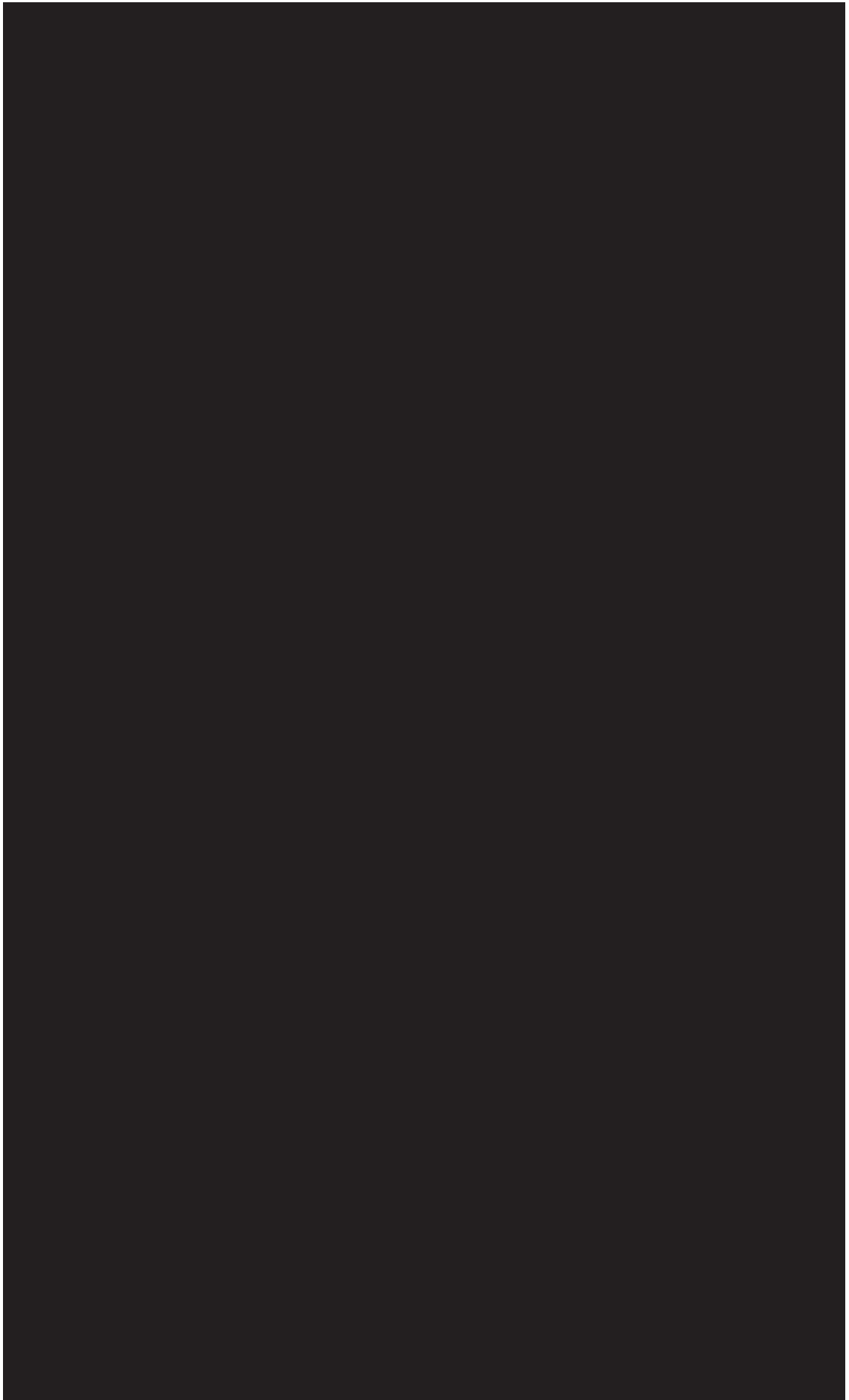
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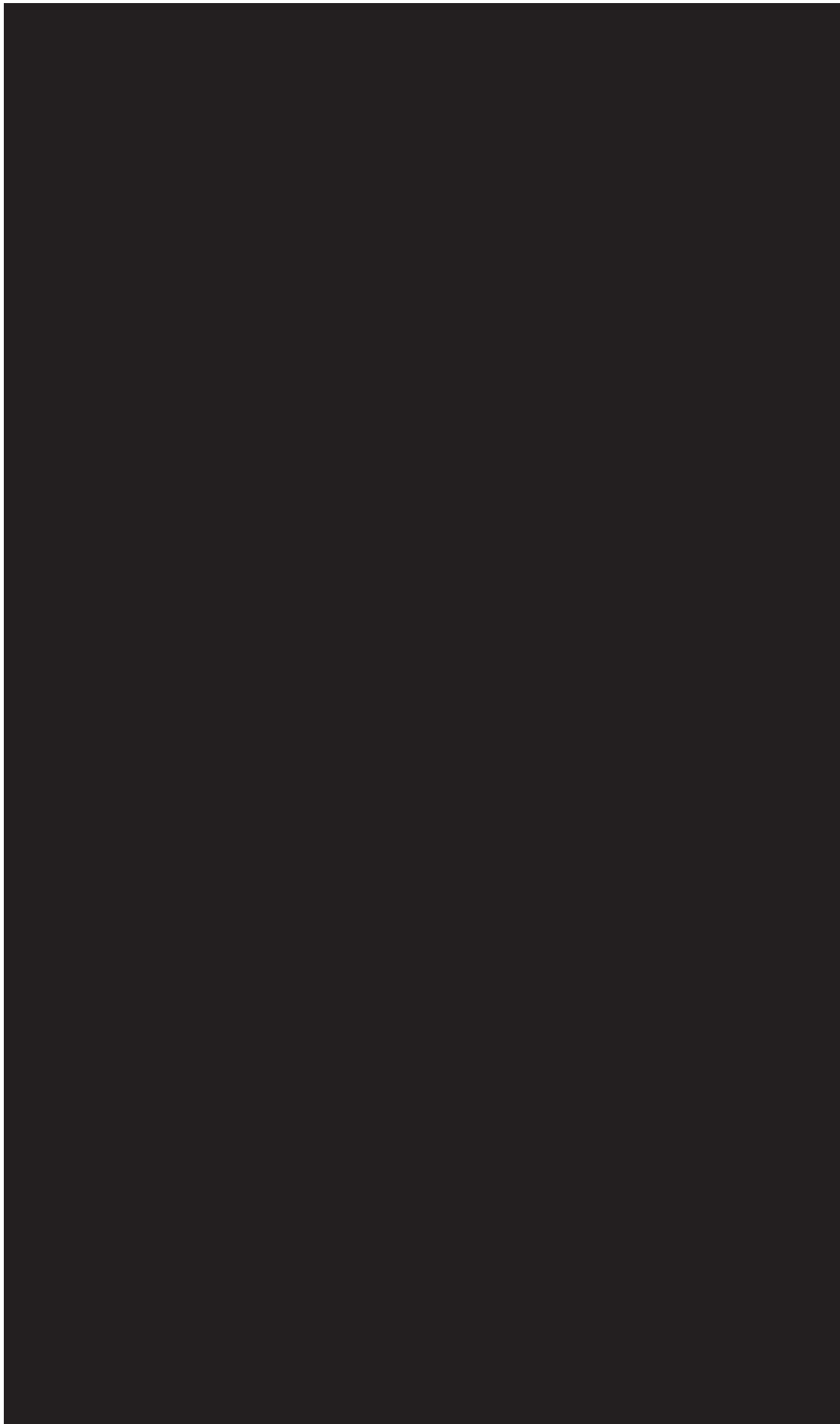
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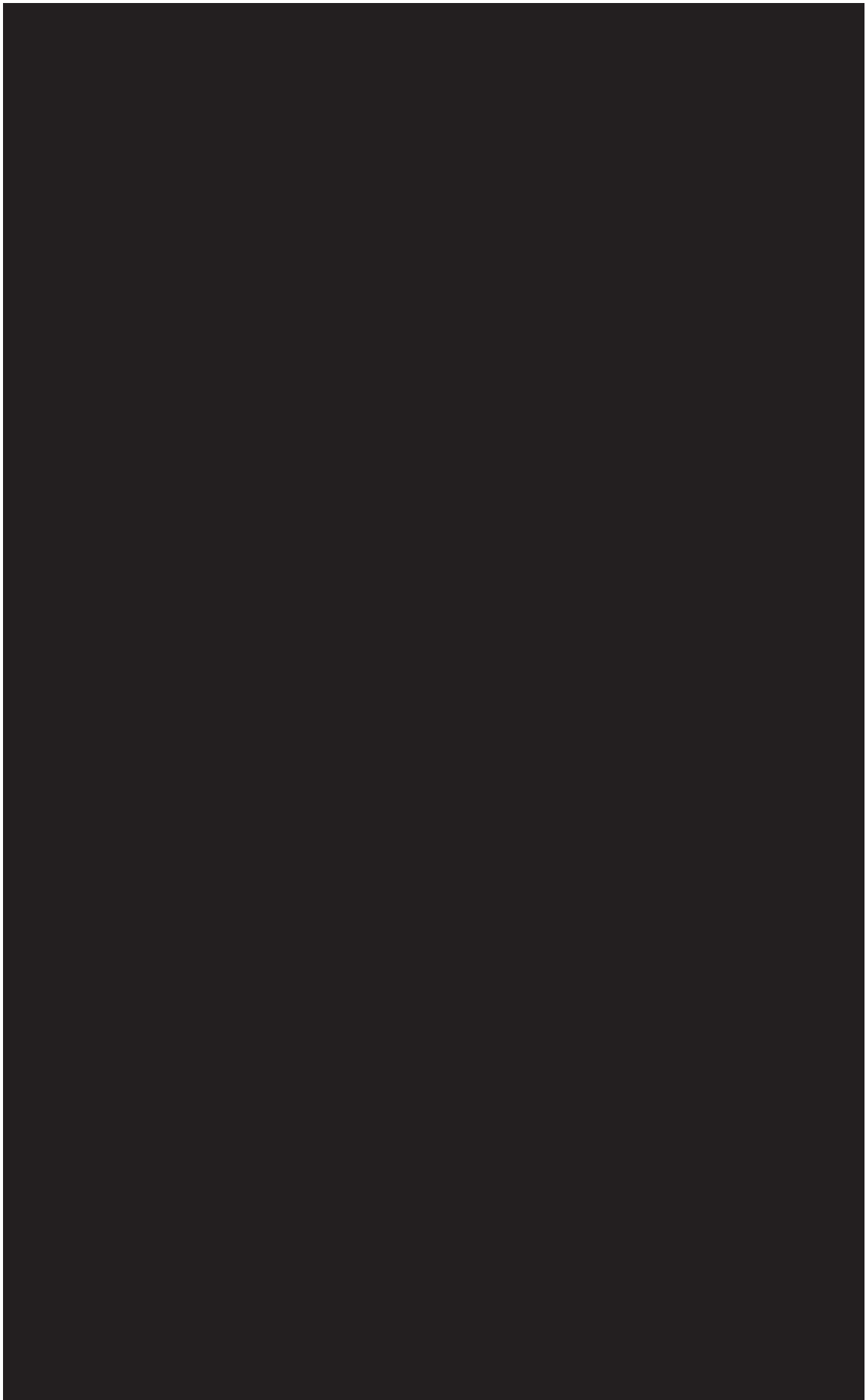
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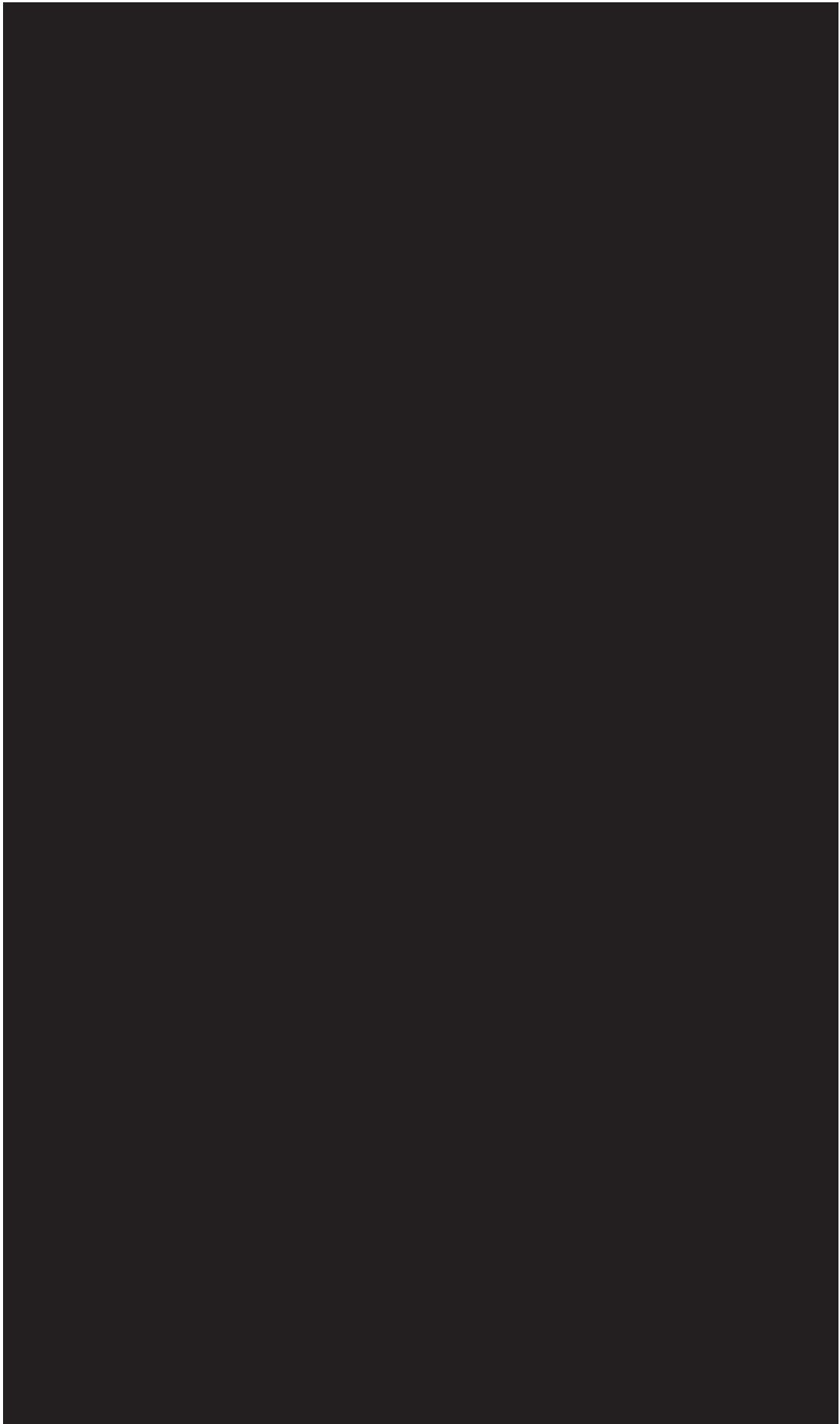
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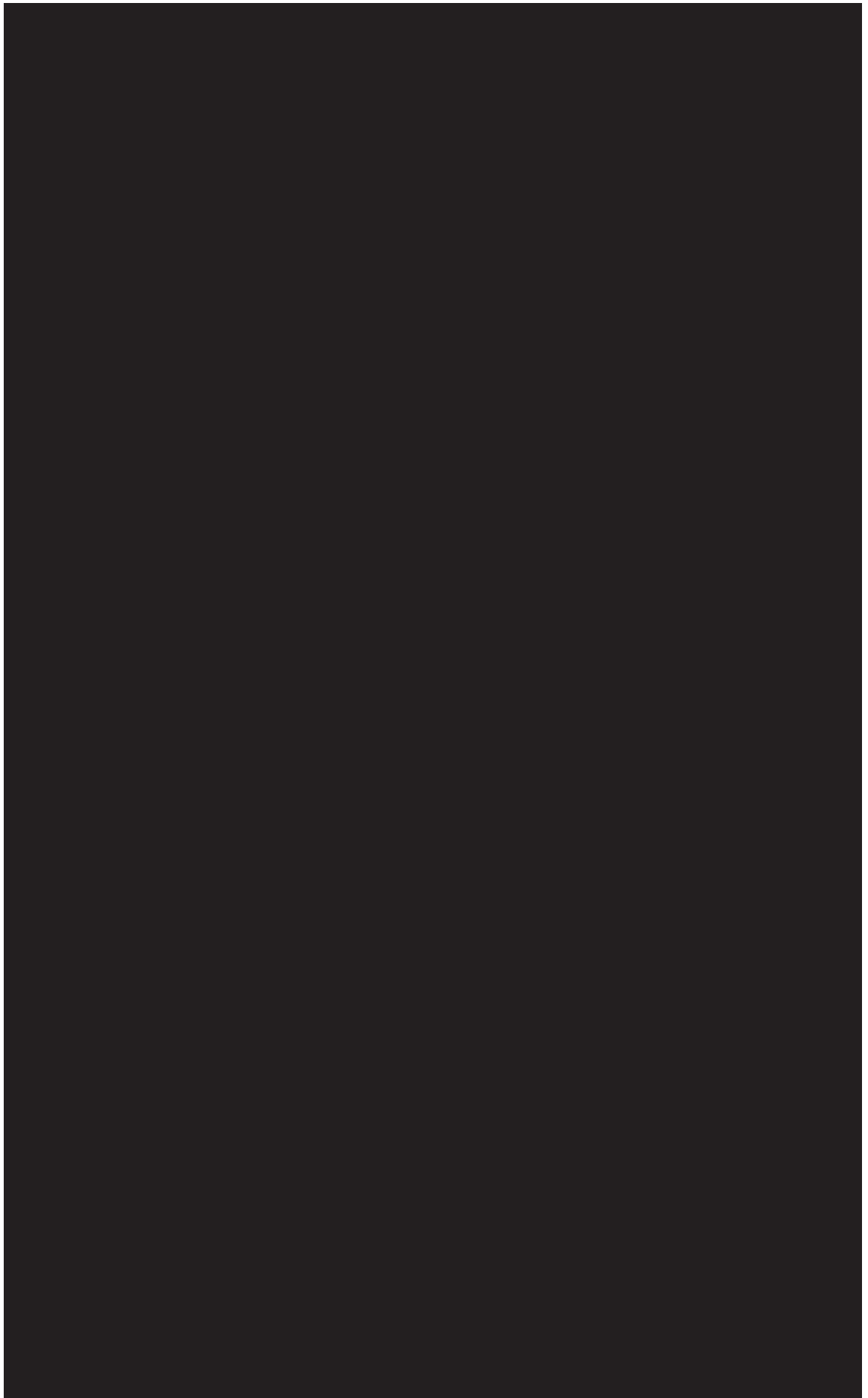
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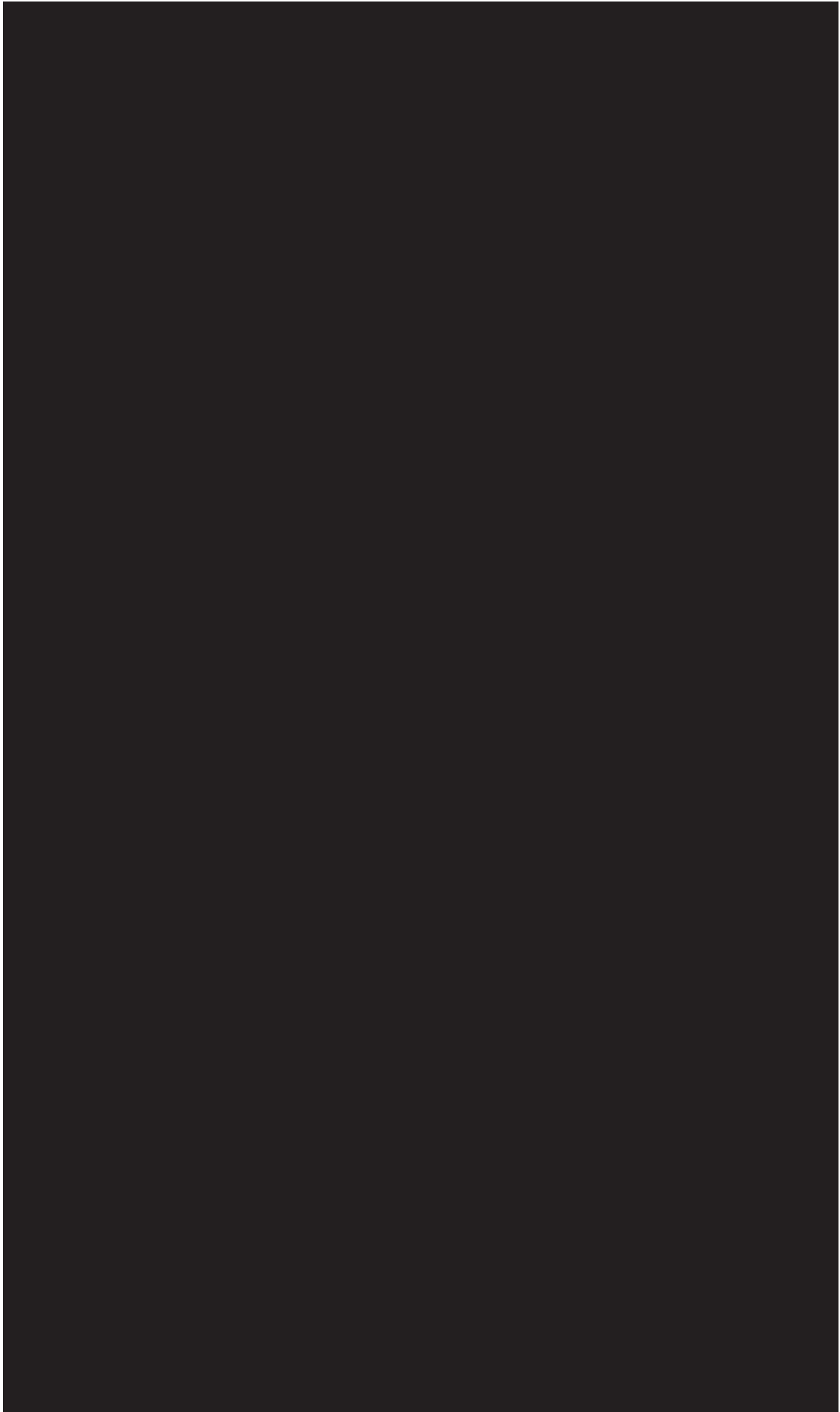
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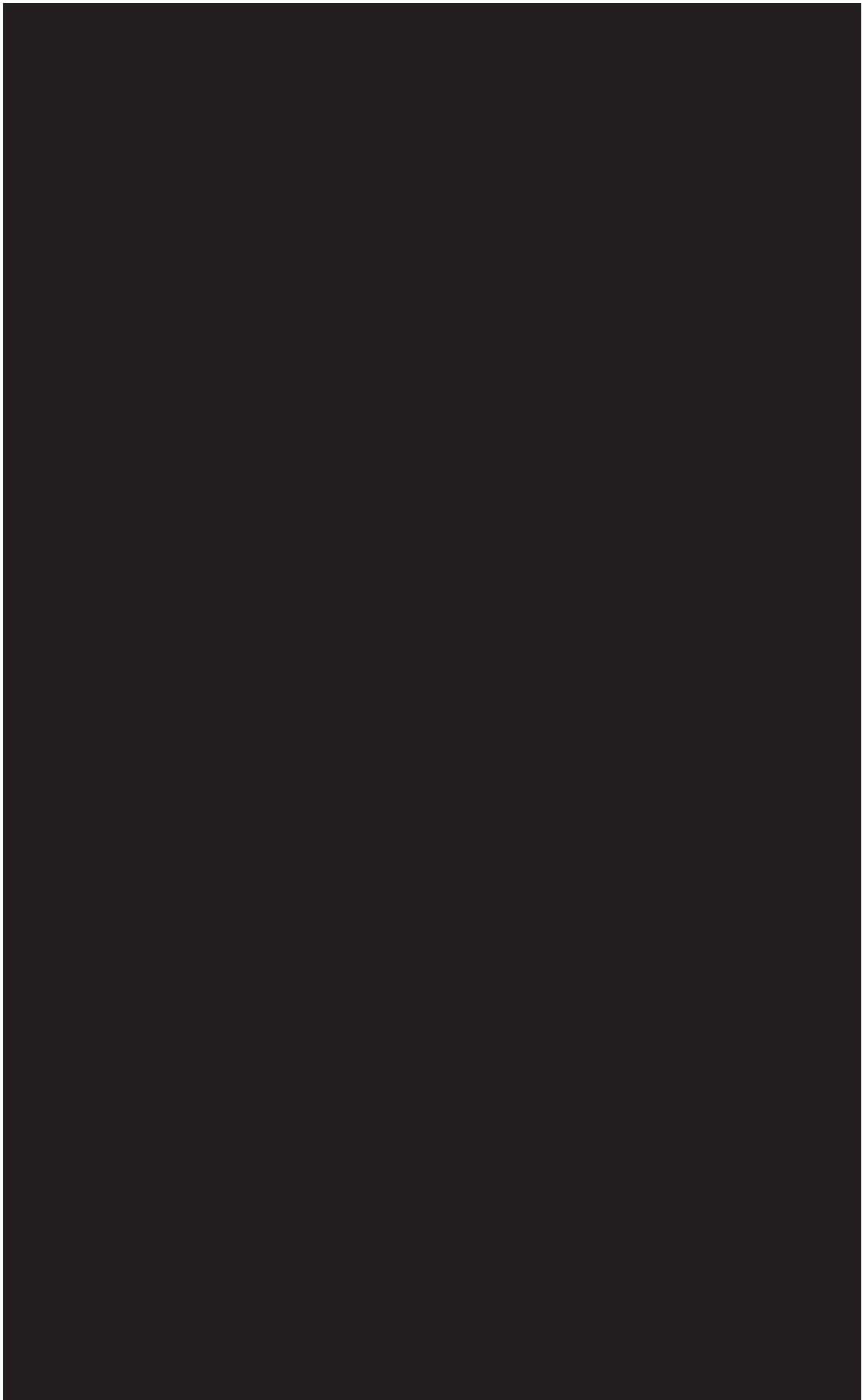
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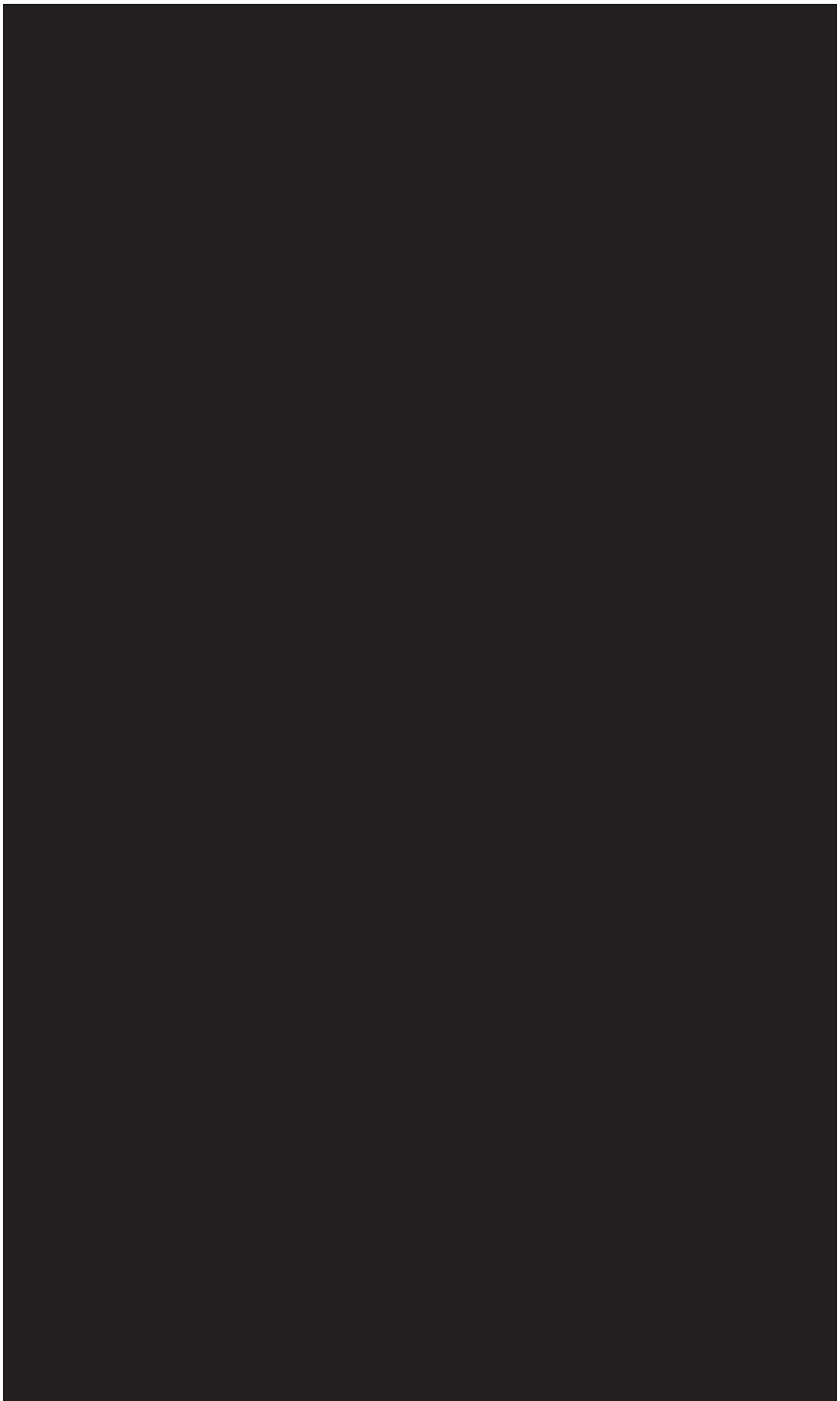
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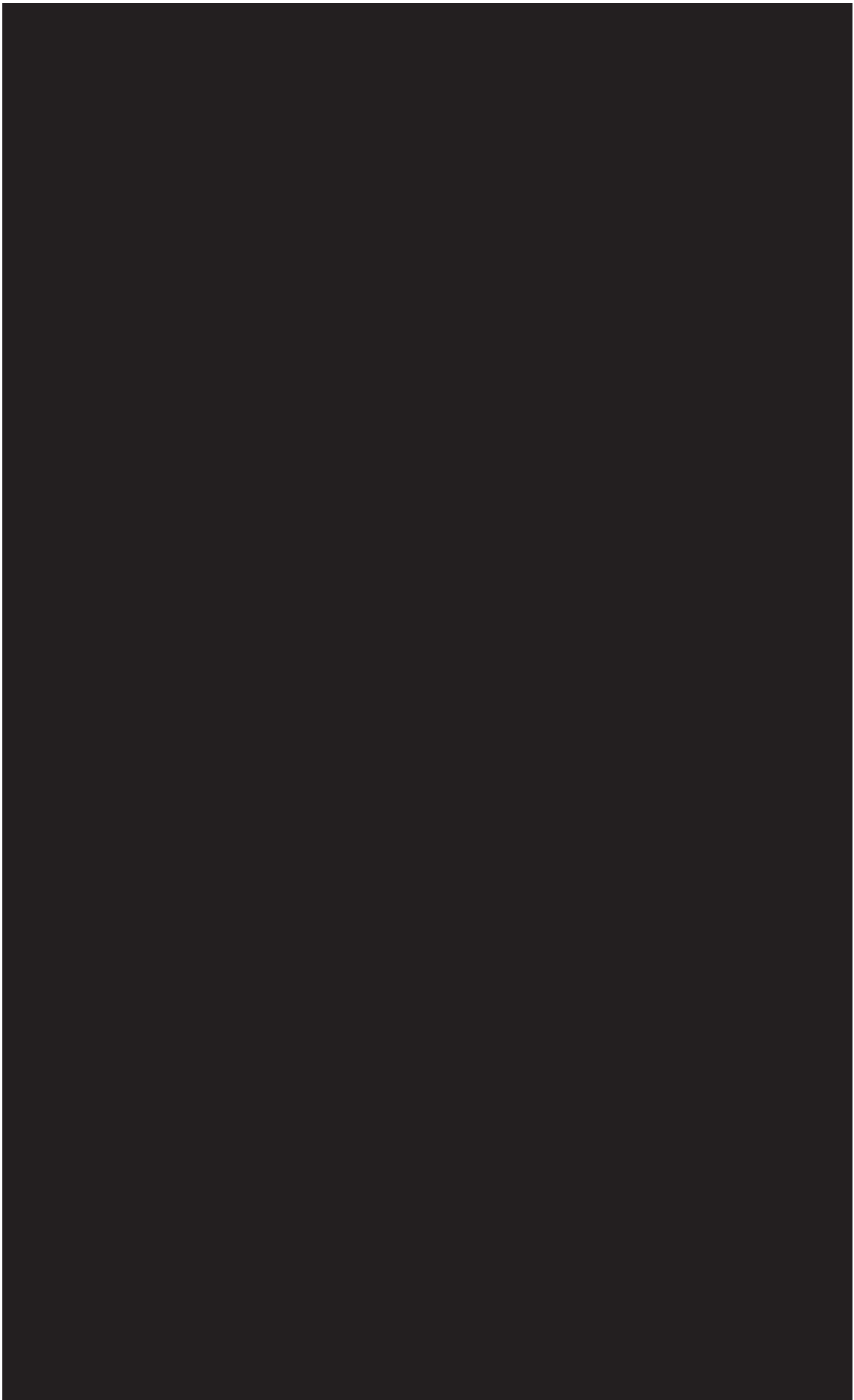
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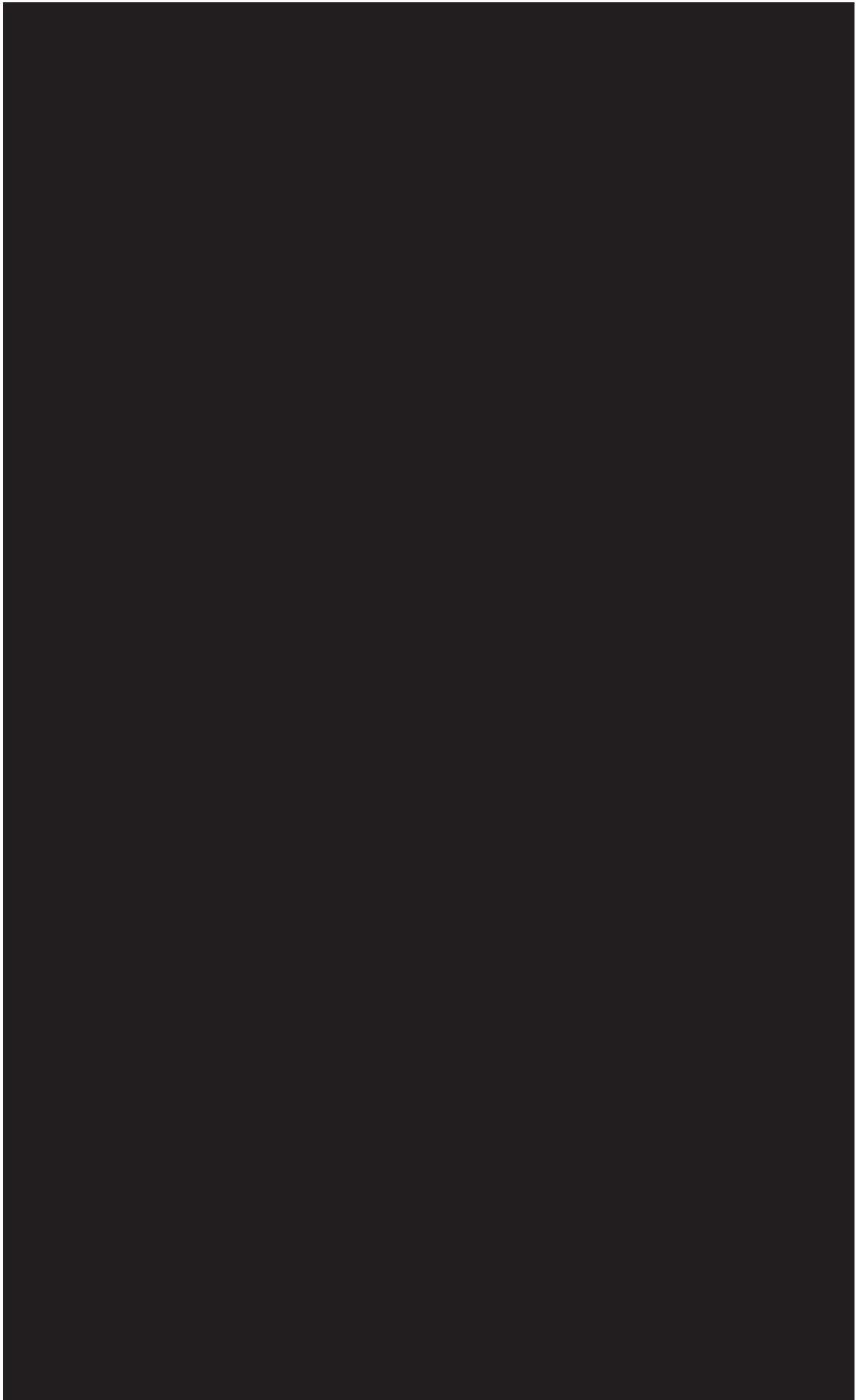
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10 A. Based on my preparation for
11 this deposition and the interviews that I
12 have conducted and my corporate
13 knowledge, the IRR report was the report
14 that would flag orders for additional
15 review. And within the logistics

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THE WITNESS: At this point
in time, to the best of my
corporate knowledge, Mr.
Mortelliti was taking the first
pass through the IRR himself. And
he would reach out for additional
resources to help him conduct his
due diligence as appropriate.




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9 A. In the first-pass review,
10 I'm unable to provide additional names of
11 folks who helped Mr. Mortelliti during
12 the period of time when he had primary
13 responsibility for the review of that
14 report.



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THE WITNESS: I understand
that Mr. Mortelliti's practice
would have been to review the
report on a daily basis and
determine whether items on the
report warranted further review
and due diligence and conduct that
review and due diligence as he
deemed appropriate.



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THE WITNESS: I'm not aware,
during that time period, that Mr.
Mortelliti identified any orders
that were deemed suspicious and
reported to the DEA.



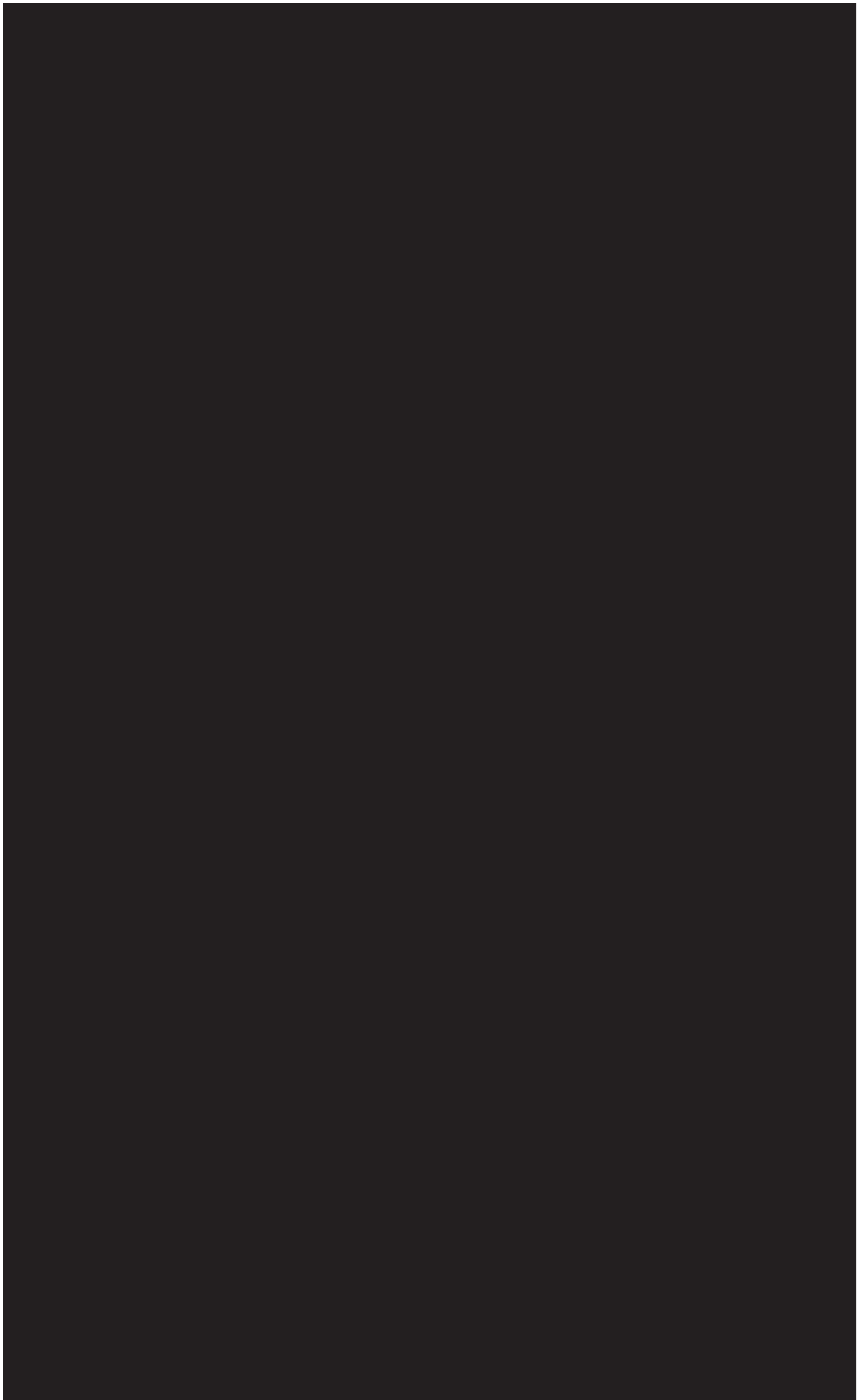
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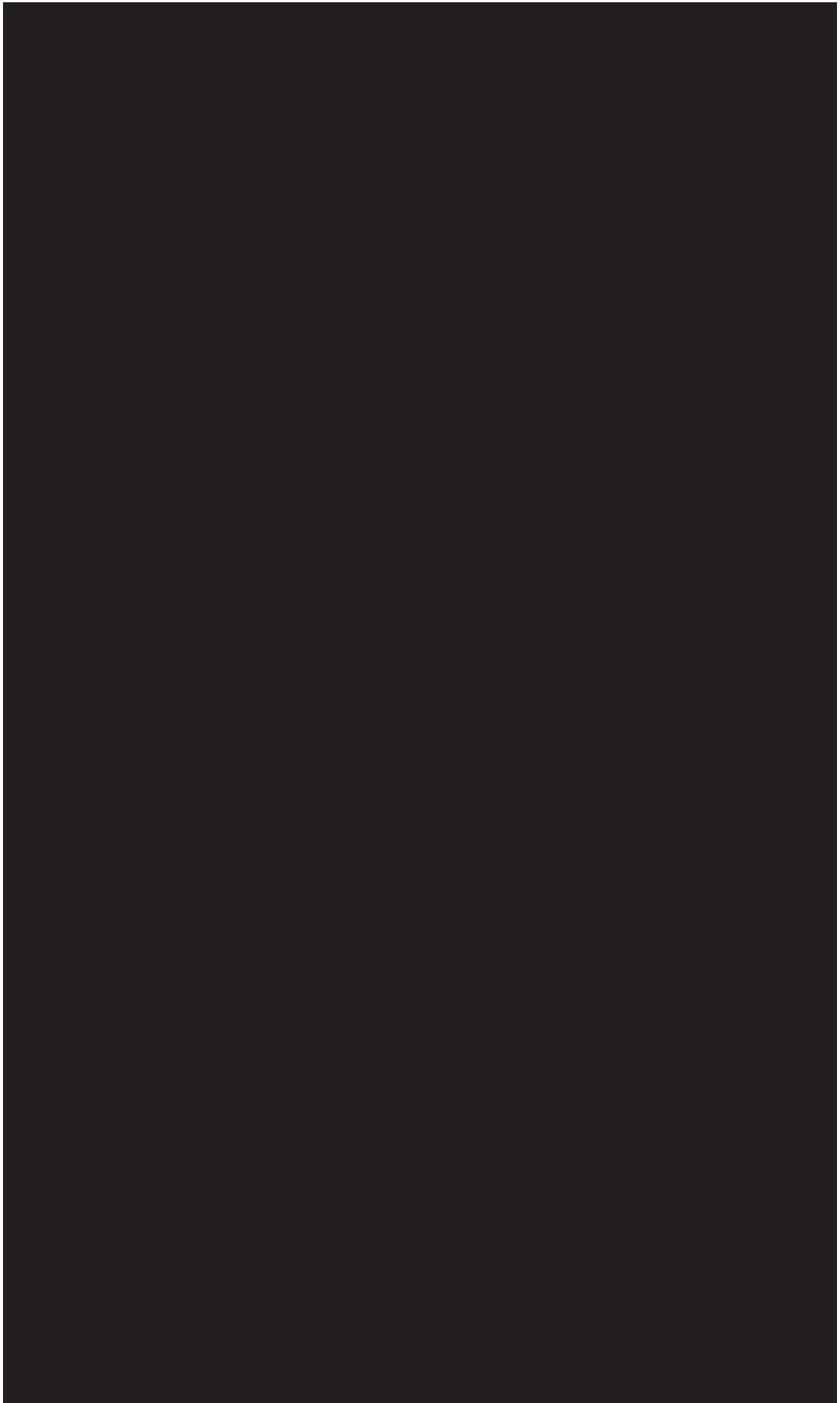
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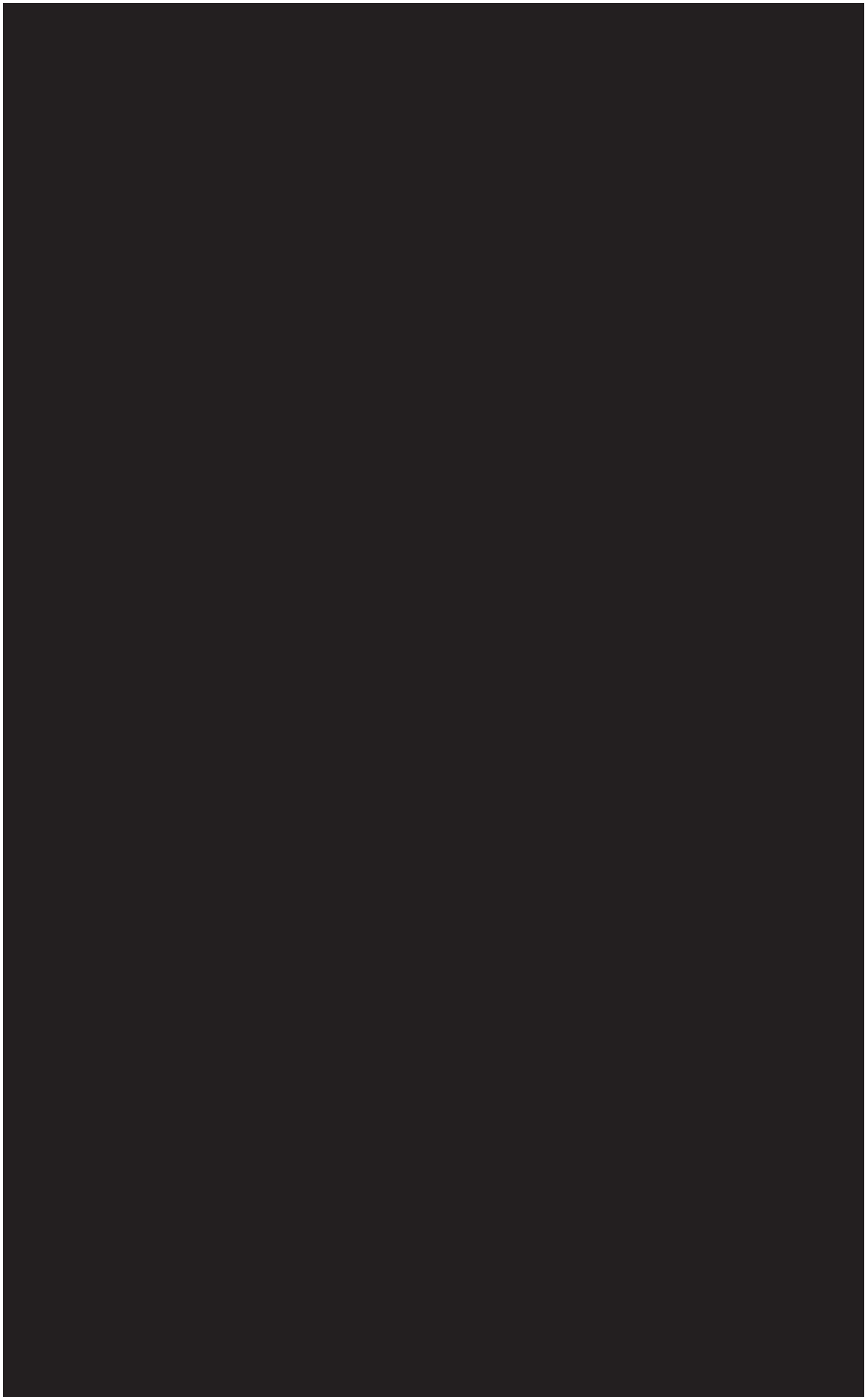
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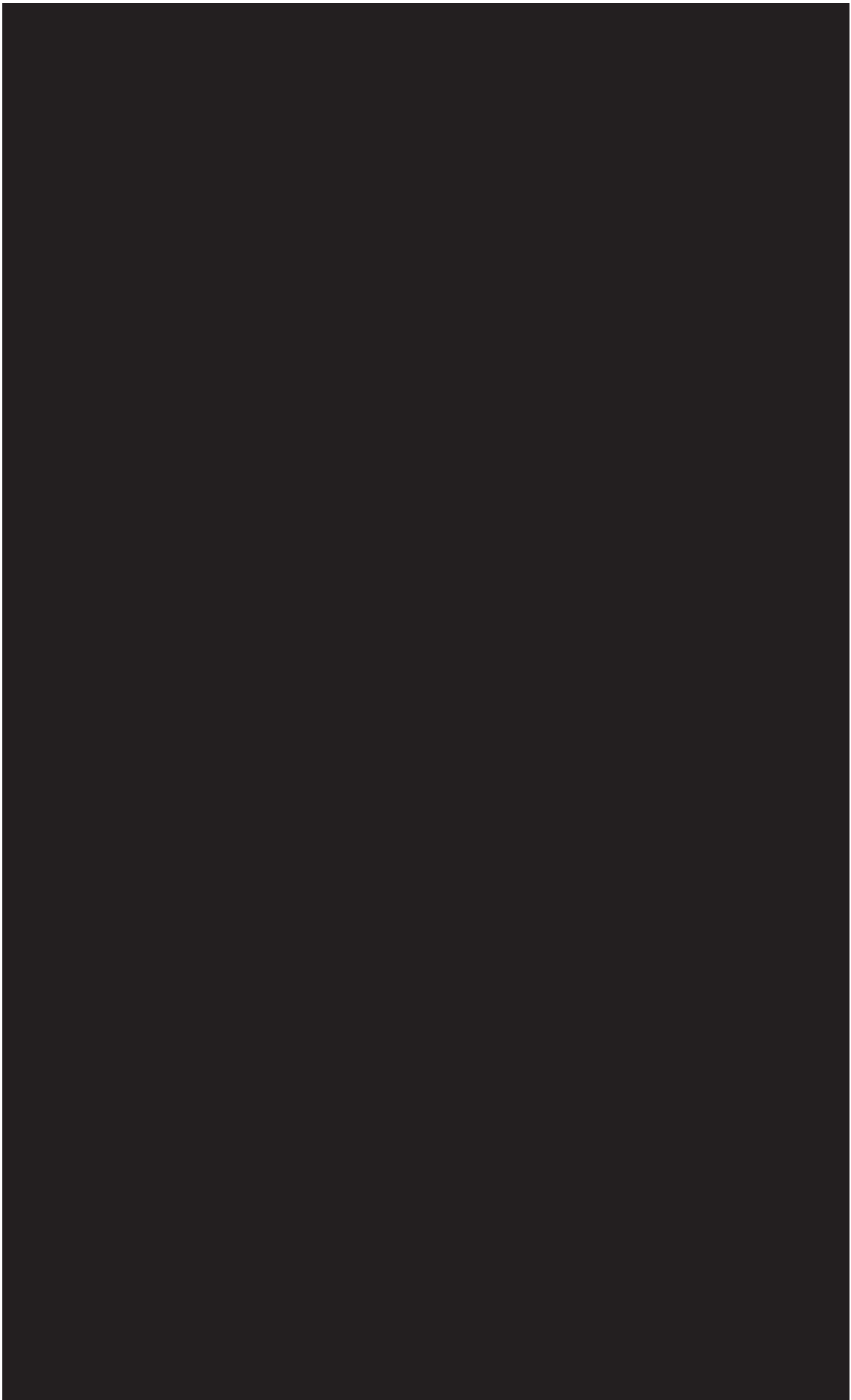
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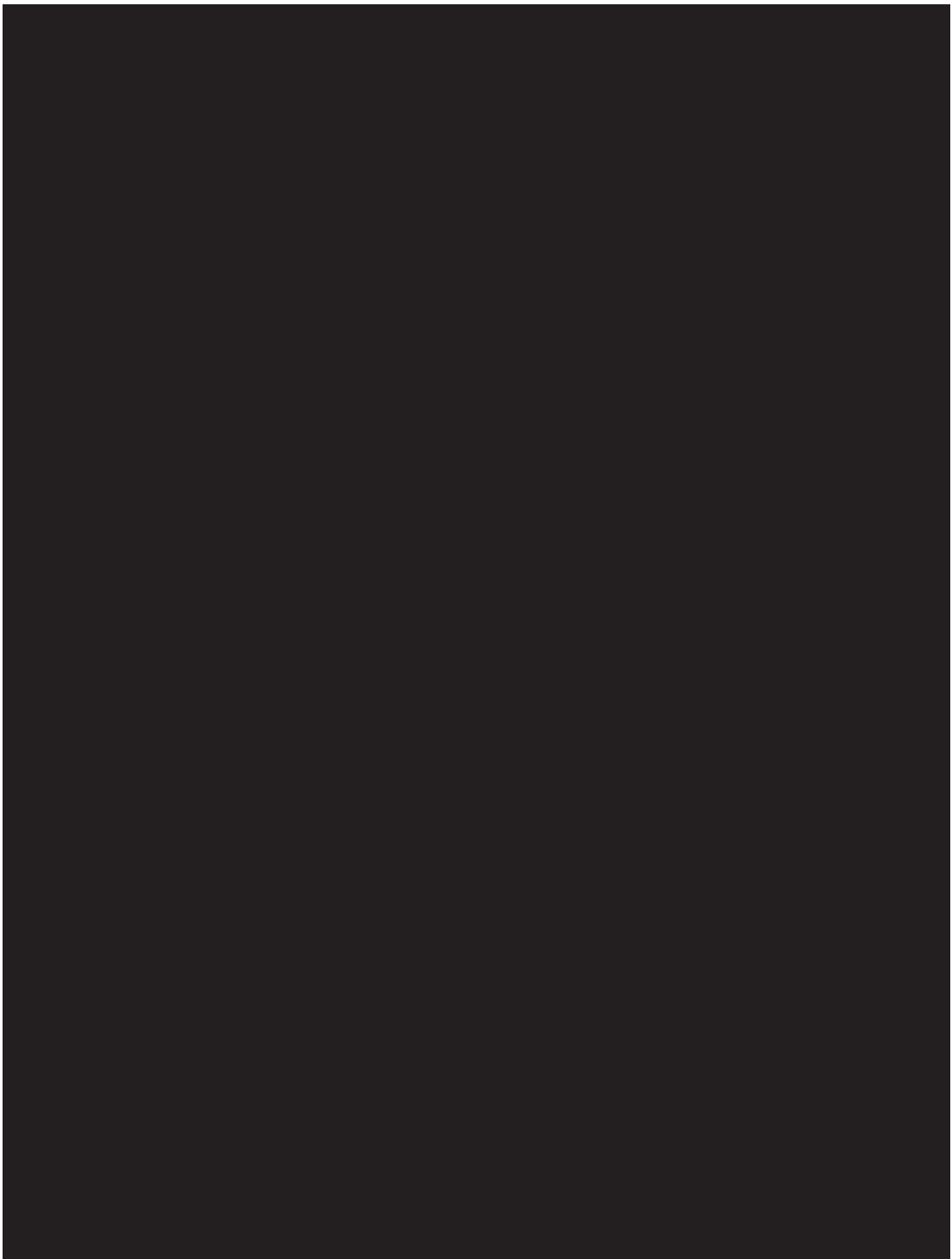
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20 Q. Some rare occasion,
21 something might get flagged for some
22 other reason.

23 But if you don't get flagged
24 in the IRR report, there's not going to

1 be due diligence, true?

2 MR. DELINSKY: Object to
3 form.

4 THE WITNESS: I can't say
5 that that's universally true. But
6 for the most part, that would be
7 true.

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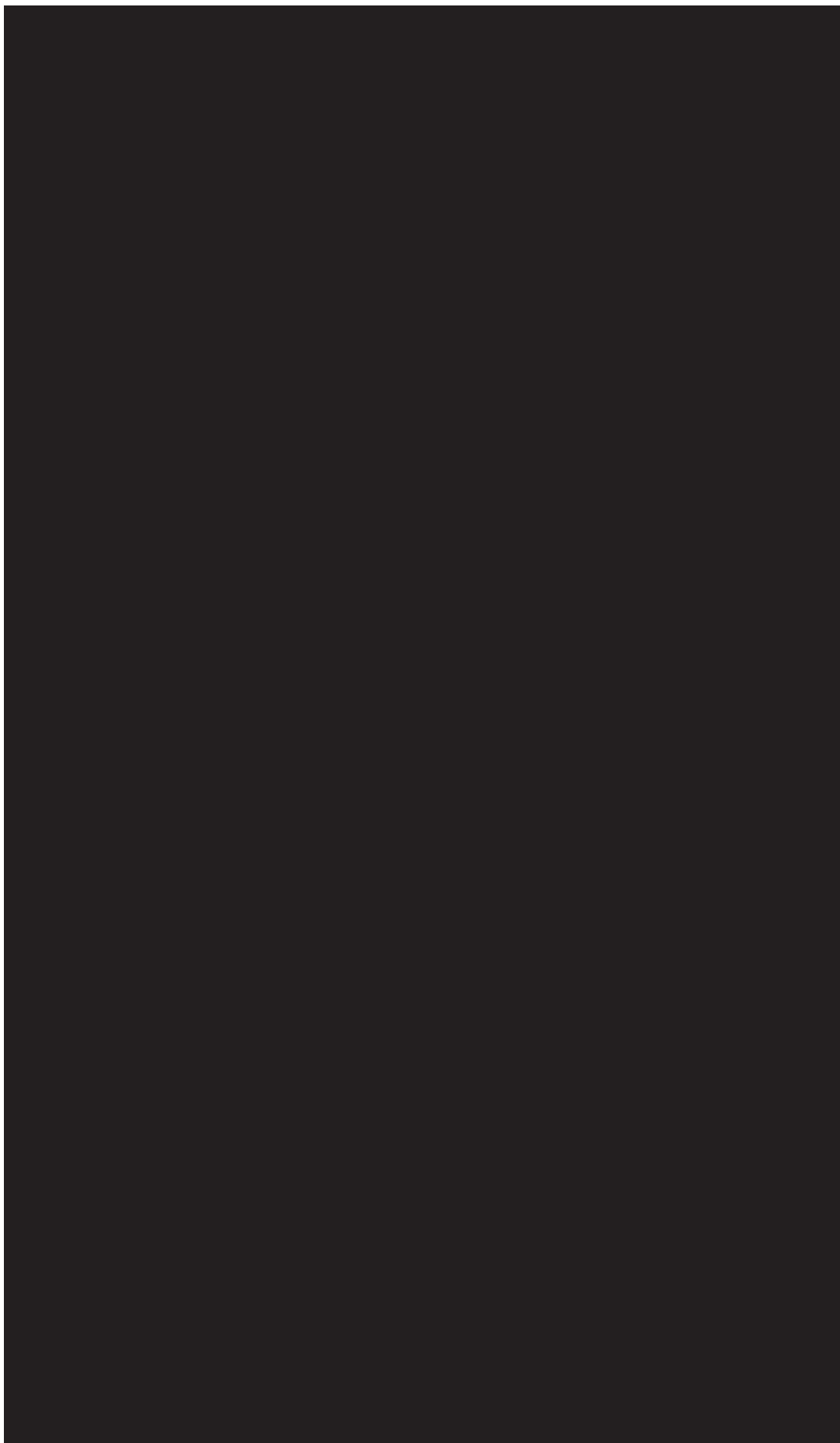
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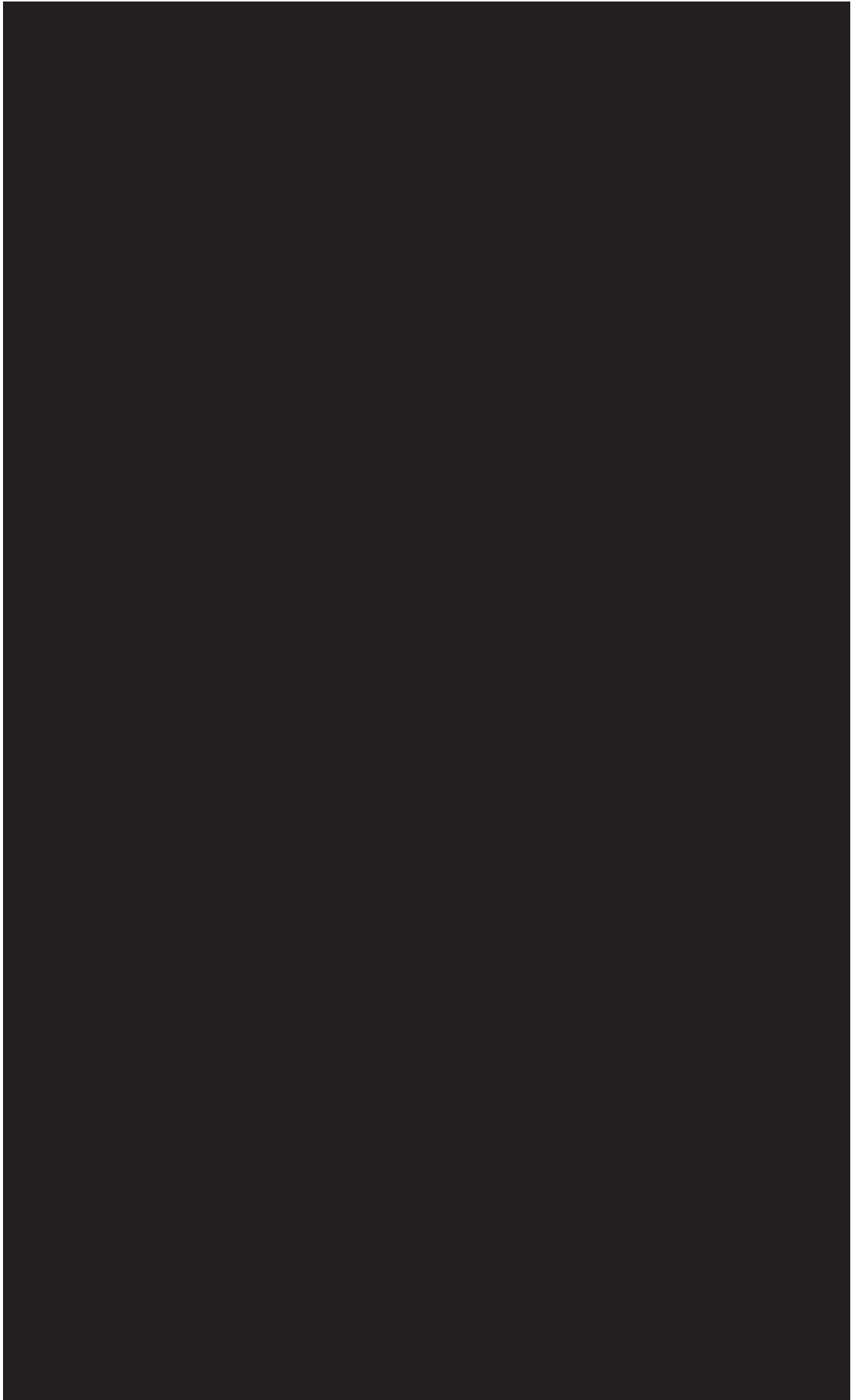
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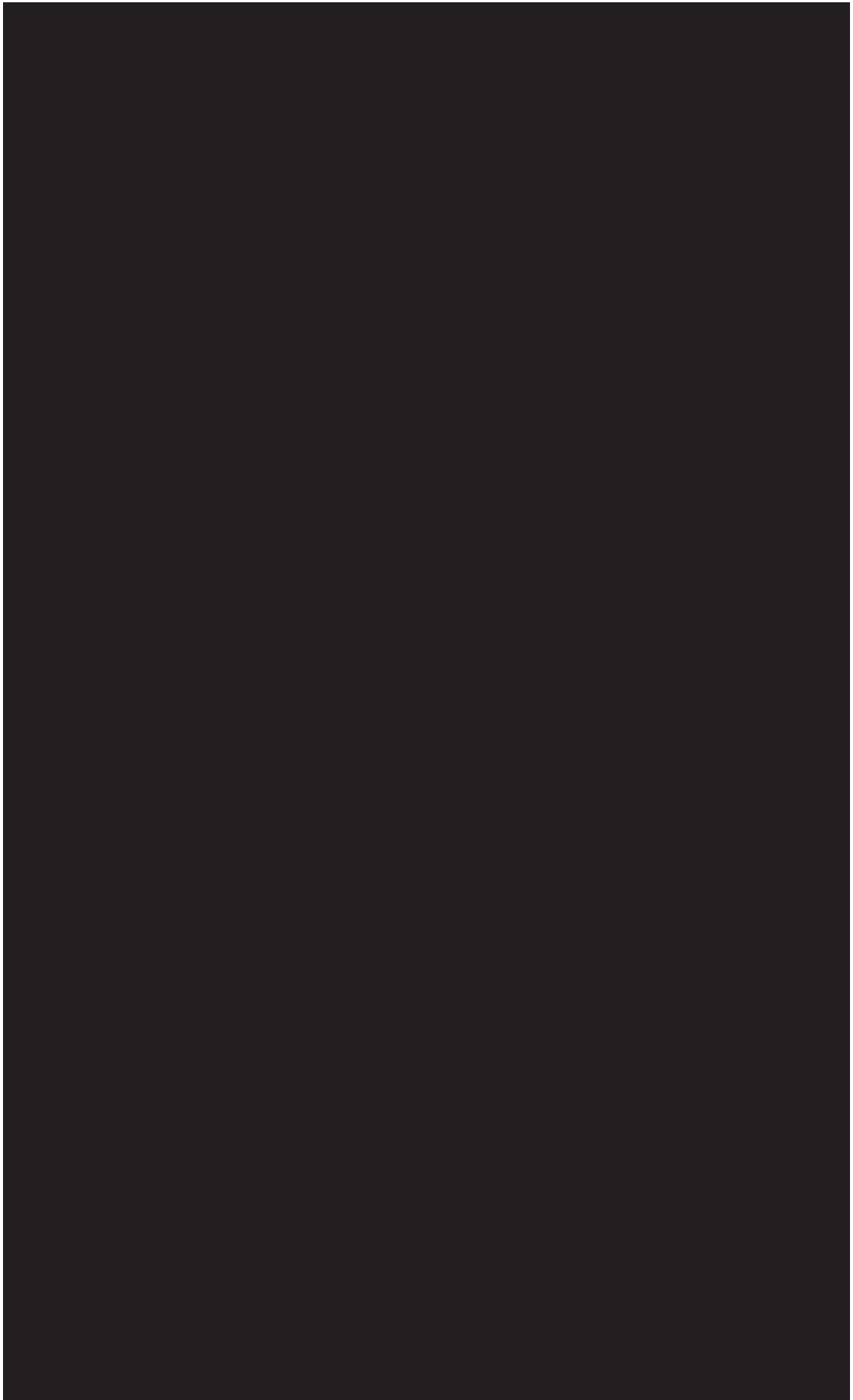
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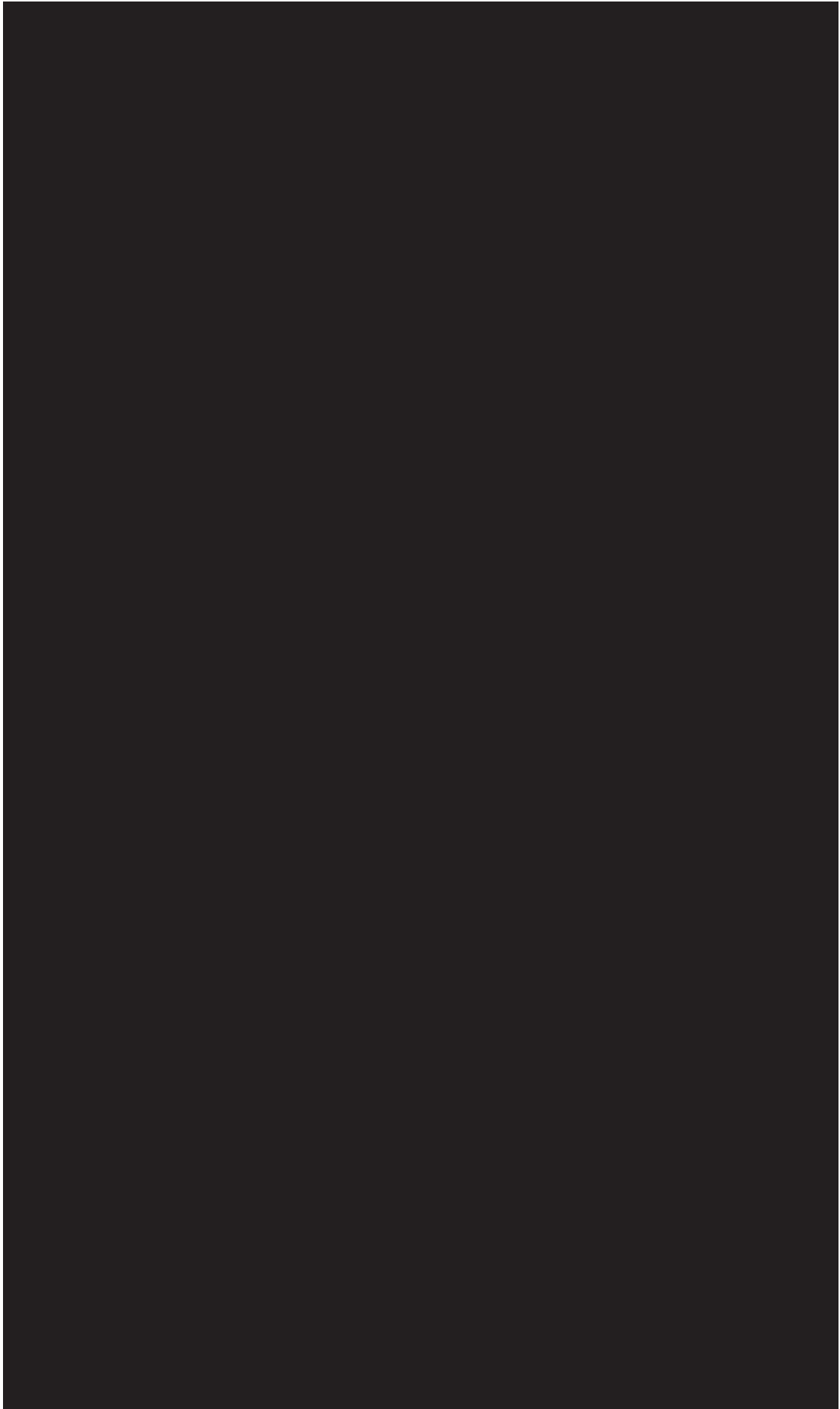
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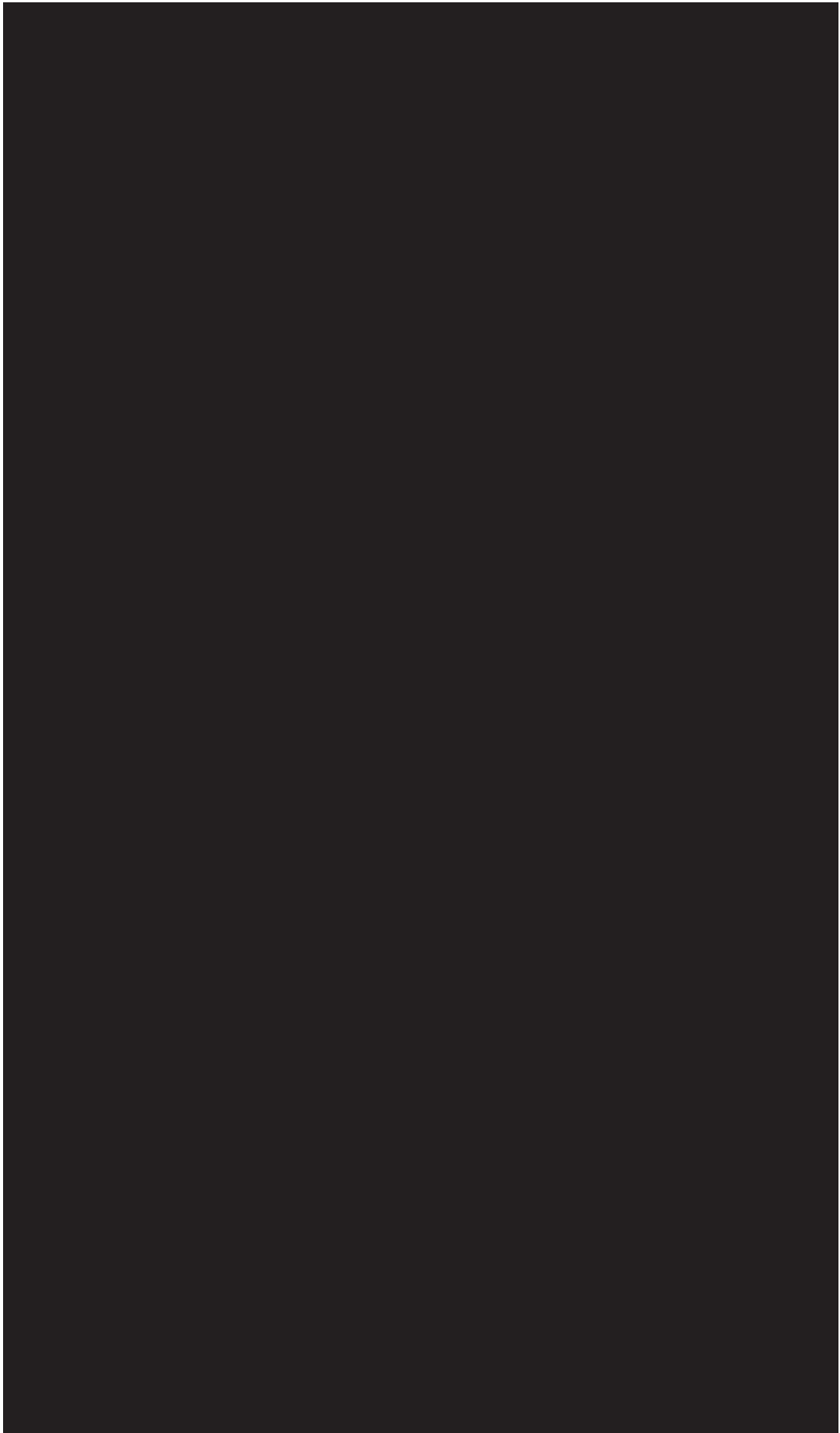
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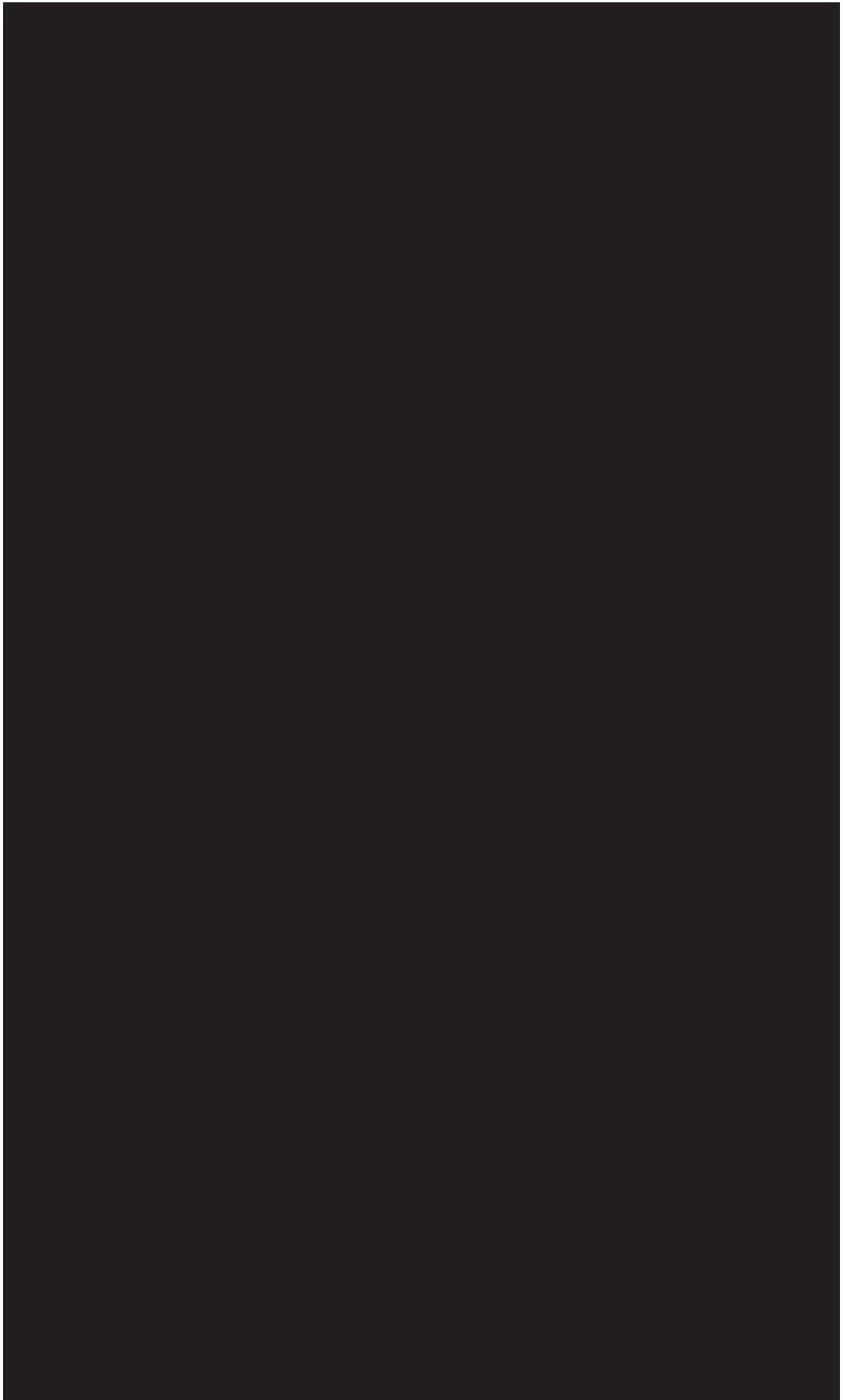
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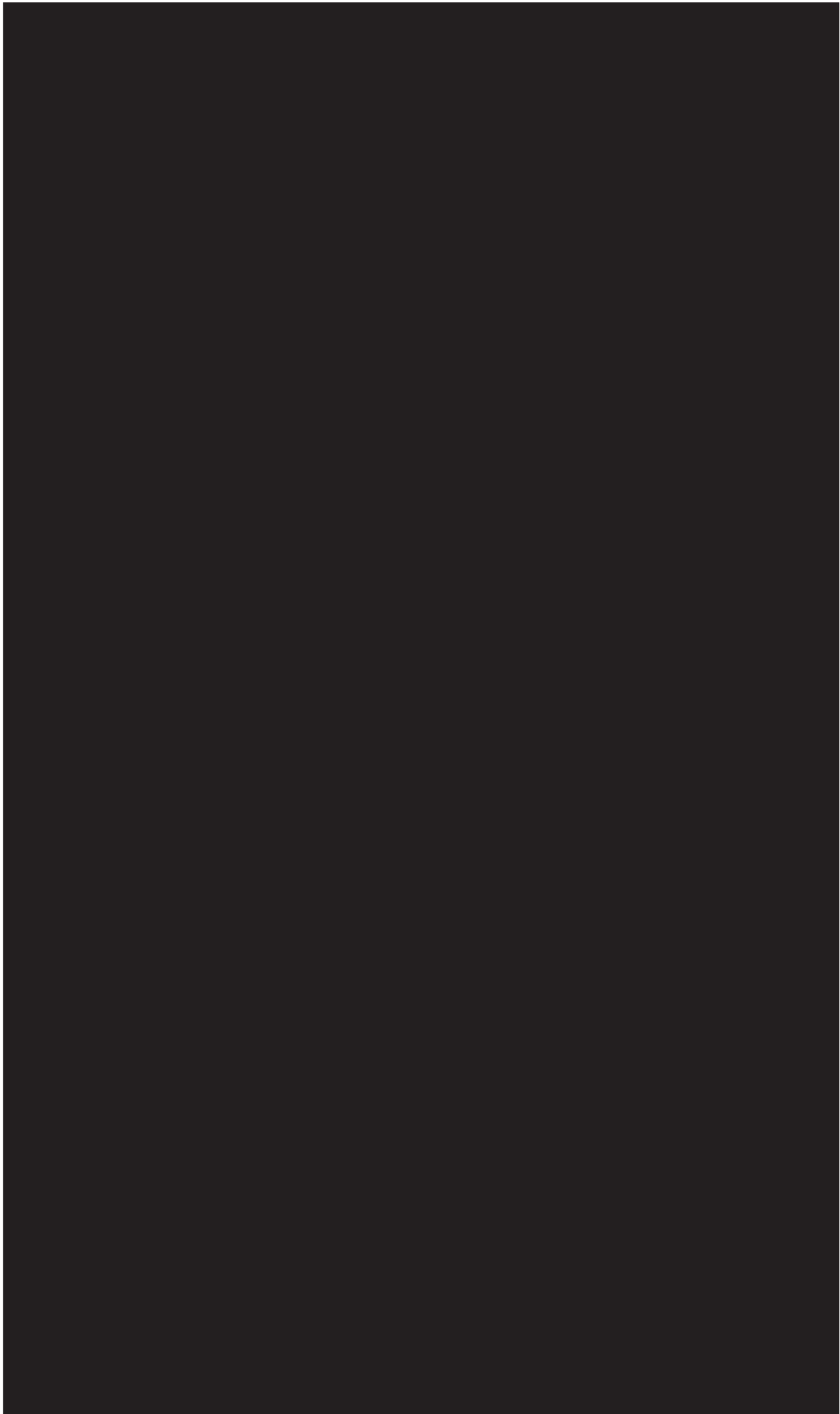
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MR. KENNEDY: Thank you.

VIDEO TECHNICIAN: The time
is 6:36 p.m. on November 20th,
2018. Going off the record.
Ending today's videotape session.

- - -

(Whereupon, the deposition
concluded at 6:36 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the
witness was duly sworn by me and that the
deposition is a true record of the
testimony given by the witness.

Amanda Maslynsky-Miller
Certified Realtime Reporter
Dated: November 23, 2018

(The foregoing certification
of this transcript does not apply to any
reproduction of the same by any means,
unless under the direct control and/or
supervision of the certifying reporter.)

1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason
6 in the appropriate space on the errata
7 sheet for any corrections that are made.

8 After doing so, please sign
9 the errata sheet and date it.

10 You are signing same subject
11 to the changes you have noted on the
12 errata sheet, which will be attached to
13 your deposition.

14 It is imperative that you
15 return the original errata sheet to the
16 deposing attorney within thirty (30) days
17 of receipt of the deposition transcript
18 by you. If you fail to do so, the
19 deposition transcript may be deemed to be
20 accurate and may be used in court.

Highly Confidential - Subject to Further Confidentiality Review

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1 ACKNOWLEDGMENT OF DEPONENT

2

I, _____, do
3 hereby certify that I have read the
foregoing pages, 1 - 472, and that the
4 same is a correct transcription of the
answers given by me to the questions
5 therein propounded, except for the
corrections or changes in form or
6 substance, if any, noted in the attached
Errata Sheet.

7

8

DATE

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10

Subscribed and sworn
11 to before me this

____ day of _____, 20____.

12

My commission expires: _____

13

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Notary Public

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